



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 7, 2022, by conference call. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit;
- A monetary order for compensation for loss or other money owed.

The Landlord was present at the hearing with his legal counsel. The Tenant was also at the hearing with his friend and witness. All parties provided affirmed testimony and confirmed they understood Rule 6.11.

Preliminary Matters – Service

At the outset of the hearing, service of the documents was raised as an issue by the Landlord.

The Tenant was asked how and when he served the Landlord with his Notice of Dispute Resolution Proceeding to the Landlord. The Tenant stated that he applied for this hearing in June 2021, and was aware that he would be receiving hearing documentation from our office. However, the Tenant stated he did not receive the Notice of Dispute Resolution Proceeding from our office, which is why he didn't send it within the allowable time frame. The Tenant stated that he wrote a letter to the Landlord (about the upcoming hearing), attached some photos and left it in the Landlord's mailbox around September 15, 2021. The Landlord denies getting this package, and stated he didn't know anything about this hearing until the Tenant emailed a significant amount of

evidence on December 24, 2021. The Landlord stated that he did not ever receive an actual copy of the Notice of Dispute Resolution Proceeding from the Tenant. Rather, the Landlord called our office around December 24, 2021, and was given a courtesy copy of the Notice of Dispute Resolution Proceeding via email.

The Landlord stated that he was out of country at the time he got this email, and he was highly prejudiced by the late service of the documentation. The Landlord stated that he was confused about what the hearing was about, and despite emailing the Tenant and asking about it, he did not get any clarification.

I have reviewed the totality of the evidence and testimony, as well as the system notes, and application dates. I note the Tenant applied for this hearing on June 15, 2021. Our office sent the Notice of Dispute Resolution Proceeding to the Tenant, to the email address he put on his application, on July 9, 2021, along with detailed instructions. The Tenant stated the email got lost, but I am not satisfied the Tenant acted in a reasonably diligent manner regarding his pursuit of this application, and service of the necessary documents. It is up to the Tenant to understand the Rules of Procedure, and the Act. Further, the Tenant stated he was aware he was supposed to receive a Notice of Dispute Resolution Proceeding from our office, yet he did not follow up and ask for a copy of the Notice of Dispute Resolution Proceeding until he called our office in December 2021.

The Rules of Procedure (3.1) clearly state that the Tenant must serve the Landlord with the Notice of Dispute Resolution Proceeding within 3 days of it being made available to him. The Tenant was not even close to adhering to this timeline. In fact, I am not satisfied the Tenant served the Landlord with the Notice of Dispute Resolution Proceeding at all. The Tenant says he sent it by email around December 24, 2021. However, the Landlord denies getting anything except for a confusing pile of evidence. Further, the parties did not have any agreement in writing about using email as a means for service. As such, the Tenant was required to serve the Landlord in accordance with the Act (and the timelines in the Rules of Procedure). However, this was not done.

In any event, the Tenant's lack of diligence prejudiced the Landlord and his ability to respond, as there was a significant amount of evidence sent a matter of days before the hearing, despite the application being made 6 months ago. I find the Tenant's application must be dismissed for the above noted reasons. I dismiss the claim, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 07, 2022

Residential Tenancy Branch