



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, FF

Introduction, Preliminary and Procedural Matters -

This hearing dealt with the landlord's application for dispute resolution made June 11, 2021, seeking remedy under the Residential Tenancy Act (Act). The landlord applied for:

- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

Neither the listed landlord nor the listed landlord's agent appeared at the hearing. Appearing on behalf of the landlord and agent was an individual who identified themselves as a friend of the landlord's agent. I questioned the friend as to their knowledge of the matters at hand and they said they had attended past hearings with the landlord's agent. I was not provided written proof of authority from the landlord's agent that the friend could act as agent.

During discussions on preliminary matters, the tenants submitted that they had not received the landlord's application and the notice of hearing. They said they received an envelope from the landlord, but the envelopes contained only pictures and other evidence. For this reason, they said they had not submitted evidence to dispute the landlord's application.

The parties provided affirmed testimony they were not recording the hearing.

It must also be noted that I learned from the tenants they had their own dispute resolution application pending, which was filed on December 20, 2021, and is set for hearing on July 26, 2022.

Analysis

Section 59(3) states that an applicant for dispute resolution must give a copy of the application to the other party within 3 days.

Section 89(1) of the Act requires that the landlord's application for dispute resolution, which includes the notice of hearing, must be given by personally handing the documents to the tenant, by registered mail to the tenant's address where they reside or to their forwarding address, or by other means of service provided for in the regulations. Under the Residential Tenancy Branch Rules of Procedure (Rules), all evidence available to the applicant **must** be served in one package and served to the respondent.

Here, the friend of the landlord's agent said the landlord served the tenants with the landlord's application by registered mail. The tenants denied receiving the application and notice of hearing documents, saying that the registered mail envelopes contained only photographic evidence.

The applicant was not present at the hearing to provide firsthand testimony to prove they placed the full Application for Dispute Resolution, evidence, and Notice of Hearing (application package) in the registered mail envelopes.

I have reviewed the landlord's photographic evidence and find support for the tenants' assertion they did not receive the landlord's application and notice of hearing. The envelope appeared to be a standard-sized letter envelope, not a larger envelope typically used for sending a multiple-page package.

Nonetheless, as I had no direct testimony from the landlord's agent or landlord to rebut the testimony of the tenants, for this reason, I find the landlord submitted insufficient evidence that a complete application package, with evidence, was properly served to the tenants according to the requirements of section 89(1) of the Act. I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable limitation periods.

As I did not proceed with the landlord's application, I decline to award them recovery of the filing fee.

The parties were informed at the hearing that all dispute resolution applications stand on their own and that evidence does not transfer from one application to the other. Typically, an arbitrator is not aware of other dispute resolution matters between the parties, unless specifically mentioned in the evidence or at the hearing. If the parties want evidence to be considered at any future hearing, it must be submitted for that application.

Conclusion

The landlords' application was dismissed with leave to reapply, due to service issues as described above.

I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 04, 2022

Residential Tenancy Branch