



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act* (the "Act") for a monetary order for damages to the rental unit, for permission to keep the security deposit, and the Landlord's request to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Landlord testified that the Application for Dispute Resolution and Notice of Hearing had been served to the Tenants by mail. The Landlord was asked to testify to the service date and present their evidence to prove service of these documents by mail. The Landlord testified they thought they had submitted proof of service to the Residential Tenancy Branch. The Landlord was advised that there were no documents before me, to show service of the Notice of Dispute Resolution Hearing documentation for these Tenants. This Arbitrator listed each document that had been submitted into documentary evidence with the Residential Tenancy Branch, for this file, to the Landlord.

Section 3.5 of the Residential Tenancy Branch Rules of procedure state the following:

“3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.’

The Landlord was provided with additional time to arrange their notes and their testimony during these proceedings. However, the Landlord remained unable to testify accurately or to present documentary evidence of the details for the service of the Notice of Dispute Resolution Hearing documentation to this Arbitrator. As the Landlord could not provide accurate testimony and documentary evidence of the service of these documents, I find that the Tenants have not been duly served the notification of this hearing as required, pursuant to section 59 of the *Act*.

Therefore, I dismiss the Landlord’s application with leave to reapply. This decision does not extend any legislated timelines pursuant to the *Act*.

Conclusion

I dismiss the Landlord’s application 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: February 4, 2022

Residential Tenancy Branch