



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for return of the security deposit and compensation for loss of use of an oven.

The tenant appeared at the hearing along with his brother; however, there was no appearance on part of the landlord.

Since the landlord did not appear at the hearing, I explored service of hearing materials upon the landlord.

The tenant initially testified that he gave the proceeding documents to the landlord in person; however, when I probed service further it was revealed that the tenant had actually given the proceeding package to the landlord's son, in person, at the landlord's residence on August 27, 2021. The tenant testified that his brother witnessed the service and they took a photograph of the tenant handing the package to the landlord's son; however, the brother that allegedly witnessed the service was not the brother the tenant had in attendance at the hearing. Nor was any photograph provided as proof of service.

Section 59 of the Act provides that an Application for Dispute Resolution and other required hearing documents must be served upon the other party within three days of making the Application for Dispute Resolution. The requirement to serve a respondent is in keeping with the principles of natural justice.

Where a respondent does not appear at a hearing, the applicant bears the burden to prove the respondent was served in accordance with the requirements of the Act.

Section 89 of the Act provides for the ways an Application for Dispute Resolution and other required documents must be served upon the respondent. A monetary claim must be served either: in person to the respondent or the respondent's agent, by registered mail, by email to a pre-agreed upon email address for purposes of serving documents, or as authorized by the Director in a Substituted Service Order.

The tenant explained that when he went to the landlord's residence, he asked to speak with the landlord but the landlord would not come to the door so he gave the proceeding package to the landlord's son.

I asked why the tenant did not use registered mail if he was unable to give the package to the landlord himself to which responded that he thought serving the landlord's son would be better than registered mail. When I informed the tenant of the service requirements the tenant stated this was his first time making an Application for Dispute Resolution.

The tenant's testimony that this was his first time making an Application for Dispute Resolution is false. The tenant has actually filed a previous Application for Dispute Resolution against the landlord (file number referenced on the cover page of this decision) to dispute a notice to end tenancy. When I turn to the decision issued under the previous dispute resolution hearing, I note that the landlord appeared at the hearing along with another individual identified as the landlord's son and a different individual identified as the landlord's agent. There was nothing presented to me to suggest the landlord's son acts as the landlord's agent.

The tenant did not obtain a Substituted Service Order authorizing the tenant to serve the landlord's son instead of the landlord.

Finally, I note that included in the tenant's evidence is a written submission of the tenant stating he served the landlord with his Notice of Dispute Resolution Proceeding on September 26, 2021 which is inconsistent with his testimony during the hearing.

All of the above considered, I found the tenant not credible and the tenant did not satisfy me that he properly served the landlord in accordance with sections 59 and 89 of the Act. Accordingly, I declined to further reconsider the Application for Dispute Resolution. The tenant's application is dismissed with leave to reapply.

In giving the tenant my decision orally during the hearing the tenant became very argumentative and continued to speak over me when I attempted to answer his questions. The teleconference call was ended at that point.

Conclusion

The tenant failed to prove service upon the landlord in a manner that complies with the Act and I decline to further consider this Application for Dispute Resolution. The tenant's Application for Dispute Resolution is dismissed 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 11, 2022

Residential Tenancy Branch