



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, pursuant to section 38;
- an authorization to recover the filing fee for this application, under section 72.

Tenants CB (the tenant) and DC and landlord RP (the landlord) attended the hearing. The landlord was assisted by BP. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant affirmed she served the notice of hearing via registered mail. The tenant does not remember when she served the notice of hearing and could not provide the tracking number.

The landlord affirmed she did not receive the notice of hearing. The landlord received an email from Residential Tenancy Branch and learned about this application.

The landlord stated she did not know the details of this application. Later the landlord said she was ready to proceed. Then the landlord testified she feels 'blindsided'.

Residential Tenancy Branch Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Based on the tenant's vague testimony, I find the tenants did not serve the notice of hearing in accordance with section 89 of the Act. The tenants did not provide the tracking number for the registered mail.

Based on the landlord's confusing testimony, I find it is not fair to proceed with the hearing, as the landlord is not aware of the details of this application.

Both parties agreed to be served documents via email. The email addresses of both tenants and the landlord are recorded on the cover page of this decision.

I dismiss the tenants' application for a monetary order with leave to reapply.

The tenants must bear the cost of the filing fee, as the tenants were not successful.

Conclusion

I dismiss the tenants' 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: April 25, 2022

Residential Tenancy Branch