Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on August 12, 2021 seeking compensation for damages to the rental unit and other money owed. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on March 7, 2022. The matter was originally scheduled for February 25, 2022; however, due to unforeseen circumstances, the Residential Tenancy Branch rescheduled the hearing for March 7, 2022.

Both parties attended the conference call hearing. I explained the process and offered the parties the chance to ask questions. I provided each party the chance to present oral testimony and make oral submissions during the hearing.

Preliminary Matter – service of the Notice of Dispute Resolution

In the hearing the Tenant questioned the Landlord's method of service for the Notice of Dispute Resolution (the "Notice") and the Landlord's evidence. The Landlord described how they attempted service to the Tenant via email; however, those emails returned to them unsent. They attempted service through a second email – this was through the Landlord's work. After this, they taped a copy of the Notice to a placard at the Tenant's own workplace, one for each Tenant.

In the Tenant's own evidence provided to the Residential Tenancy Branch they provided a copy of an email from their work colleague to the Landlord, refusing to accept that service. On September 7, 2021, this colleague stated clearly: "I am unable to accept the service of these documents."

After this the Landlord responded to say, “I believe the message has been delivered [i.e., forwarded to the Landlord]”. Also: “I have also delivered a hard copy package to your office building.”

In the hearing, the Landlord confirmed the Tenant contacted them directly approximately 2 weeks prior to the rescheduled hearing date to inquire on their evidence and ask that it be sent to them. The Tenant provided their email to the Landlord dated February 18 in which they made this request, and the Landlord’s evidence attached in their response to the Tenant’s query.

In the hearing, the Tenant referred to the *Residential Tenancy Branch Rules of Procedure*, specifically Rule 3.14 which sets out that “documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch. . . not less than 14 days before the hearing.” The Tenant stated this mode of disclosure was prejudicial to them, where they had not received the Landlord’s evidence prior to making their own response for this hearing.

To look at the question of the Landlord’s service of the Notice, the *Act* s. 89(1) stipulates that an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

> (a) by leaving a copy with the person;
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e) as ordered by the director under s.71 (1) *[director's orders: delivery and service of documents]*;
> (f) by any other means of service provided for in the regulations.

I find the Landlord has not fulfilled the service provisions under s.89 of the *Act*. I make this finding due to the delivery method of the hearing package (including, most importantly, the Notice) being very indirect. This involved a third party via email, with no proof that this individual ensured the Tenant would receive the material. Also, posting material to the Landlord’s place of work is not a method that ensures delivery. I find the Notice was not served in a way recognized by the *Act* or the *Residential Tenancy Regulation* s. 43.

The *Residential Tenancy Branch Rules of Procedures* Rule 3 provides the rules on serving the application and hearing information. This is to ensure the objective of a fair, efficient, and

consistent process for resolving disputes. In line with s. 59(3) of the *Act*, Rule 3.1 sets the timeline of initial service after an application:

> The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
>
> a) the Notice of Dispute Resolution Proceeding . . .
> b) the Respondent Instructions for Dispute Resolution;
> c) the dispute resolution process fact sheet (RTB-114) . . . provided by the Residential Tenancy Branch; and
> d) any other evidence submitted to the Residential Tenancy Branch . . .

The fact sheet *Residential Tenancies Fact Sheet – The Dispute Resolution Process* (RTB-114) reiterates this three-day timeline. This is separate from the end date for providing *evidence*, where "an applicant must service and submit *evidence* as soon as possible so that it is received not less than 14 days before the hearing." I find the Landlord only forwarded their evidence to the Tenant in response to the Tenant's own request on February 18, which is less than 14 days before the original scheduled hearing on February 25.

For these reasons, I dismiss the Landlord's Application, with leave to reapply. I dismiss the claim for the Application filing fee without leave to reapply.

Conclusion

For these reasons, I dismiss the Landlord's Application for compensation, with leave to reapply.

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

Dated: April 4, 2022

Residential Tenancy Branch