



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNDL FFL

Introduction

The landlords sought compensation from their former tenants pursuant to section 67 of the *Residential Tenancy Act* (the “Act”). In addition, they sought to recover the cost of the application filing fee under section 72 of the Act.

A dispute resolution hearing was convened on September 29, 2022 and all parties, along with an agent for the landlords, attended.

Preliminary Procedural Issue: Service of Notice of Dispute Resolution Proceeding

Subsection 59(3) of the Act and Rule 3.1 of the Residential Tenancy Branch’s *Rules of Procedure* (the “Rules”) require that an applicant serve all respondents with a copy of the Notice of Dispute Resolution Proceeding, along with relevant evidence (referred to as the “Notice of Dispute Resolution Package”) within three days of the Notice of Dispute Resolution Proceeding being made available by the Branch.

The landlords made their application for dispute resolution on February 12, 2022. On February 17, 2022 the Residential Tenancy Branch sent by email a copy of the Notice of Dispute Resolution Proceeding to the applicant landlords. This information is contained within the Residential Tenancy Branch file.

The tenants explained that they were never served with the Notice of Dispute Resolution Proceeding or any evidence. Indeed, they stated that they only found out about this dispute when the landlords contacted them by email on September 7, 2022.

The landlords explained that they mailed the Notice of Dispute Resolution Proceeding Package to the tenants by regular, or ordinary mail. They did not send the package by registered mail. As explained to the parties during the hearing, the Act requires that a Notice of Dispute Resolution Proceeding be served by registered mail (section 89(1)(c) of the Act).

Other methods are also permitted under section 89 of the Act, though sending such a document by ordinary mail is not permitted. (Ordinary mail service is, however, permissible for other types of less important documents. See section 88 of the Act.) Suffice to say, the problem with sending anything by ordinary mail is that there is no way to track and confirm service and receipt of ordinary mail.

Rule 3.5 of the *Rules* states that

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.

Based on the testimony and submissions of the parties, I am not satisfied that the landlords successfully served each tenant with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act the *Rules of Procedure*.

Accordingly, it is my finding that the applicants' application for compensation be dismissed with leave to reapply. The landlords are at liberty to file another application for dispute resolution if they wish. The landlords' claim to recover the cost of the application filing fee, however, is dismissed without leave to reapply.

Conclusion

For the reasons explained above, the landlords' application is dismissed with, and without, leave to reapply,

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 29, 2022

Residential Tenancy Branch