



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order for emergency repairs pursuant to s. 33 of the *Act*; and
- return of her filing fee pursuant to s. 72.

T.L. appeared as the Tenant. L.B., J.D, and M.G. appeared and identified themselves as witnesses. The witnesses were disconnected at the outset of the hearing and were to reconnect when called upon to provide evidence.

J.R. appeared as the Landlord’s agent.

The parties affirmed to tell the truth during the hearing.

Dismissal of Tenant’s Application

At the outset of the hearing, I enquired with the Tenant whether the Notice of Dispute Resolution and her evidence was served on the Landlord. The Tenant indicated that everything was served. J.R. indicated that the Landlord had not received the Tenant’s Notice of Dispute Resolution and listed various documents provided by the Tenant over the course of the past several months. I am told by the Tenant that there is/are other application(s) with respect to this tenancy.

The Landlord’s agent advised that she learnt of the contact information for the hearing by contacting the Residential Tenancy Branch on the morning the hearing was scheduled. The Landlord’s agent says she obtained the file number for the application in one of the documents she received from the Tenant, though again emphasized the Landlord was not served with the Notice of Dispute Resolution for the application.

Rule 3.1 of the Rules of Procedure requires applicants to serve the Notice of Dispute Resolution on each named respondent within three-days of receiving it from the Residential Tenancy Branch. In this instance, the Notice of Dispute Resolution was generated by the Residential Tenancy Branch on June 6, 2022. Rule 3.5 of the Rules of Procedure requires applicants to be prepared at the hearing to provide proof that the Notice of Dispute Resolution and their evidence has been served.

The Tenant emphasized that the Notice of Dispute Resolution had been served, though indicates someone else had done so on her behalf. She provided several registered mail tracking numbers, some of which predated the Notice of Dispute Resolution being generated on June 6, 2022. J.R. acknowledged receipt of registered mail on the 12th of September, though says that it did not include the Notice of Dispute Resolution.

To be clear, service of the Notice of Dispute Resolution is an essentially component of ensuring a procedurally fair process as it sets out the four-corners of an applicants claim. Respondents must know of the applicant's claims well in advance of the hearing so that they can adequately prepare. Based on the Tenant's conflicting evidence with respect to service and the specific denial of receiving the Notice of Dispute Resolution from the Landlord's agent, I find that the Tenant has failed to demonstrate service of the Notice of Dispute Resolution.

Policy Guideline #12 provides guidance with respect to the service requirements under the *Act*. It indicates that when a party has not been served, the matter may proceed, be adjourned, or dismissed with or without leave to reapply. In this instance, it would be inappropriate to proceed with the hearing in light of the fact that the Tenant has failed to give the Landlord notice of her application by serving the Notice of Dispute Resolution.

I asked for submissions on whether the matter be adjourned or dismissed. The Tenant indicates that the issues in her claim remain outstanding and need to be heard. The Tenant further indicated that she was unfamiliar with the process. The Landlord's agent indicated the view that the matter be dismissed and indicates that the Tenant had means of knowing the service process.

Due to the lack of service, I find that the appropriate course is to dismiss the Tenant's application under s. 33 of the *Act* with leave to reapply.

Adjourning the matter would be inappropriate, in my view, as it would amount to my excusing the Tenant's breach of Rule 3.1 of the Rules of Procedure as the Notice of Dispute Resolution was not served within three-days of it being provided to the Tenant. The Tenant ought to have known the rules and it is no excuse to say that one is unfamiliar with the process.

Dismissing it with leave to reapply preserves the Tenant's right to have her matter adjudicated on its merits once the Landlord has been properly served. Whatever prejudice that may result from the delay is a direct result of the Tenant's failure to properly serve the Landlord. Should the Tenant wish to reapply, I would encourage her to organize herself and her materials such that she complies with the service provisions of the *Act* and the process set out in Rules of Procedure.

With respect to the Tenant's request for return of her filing fee under s. 72 of the *Act*, I find that the appropriate course is to dismiss this claim without leave to reapply. The Tenant's application was not dealt with in the standard course due to her failure to serve the Notice of Dispute Resolution. The Tenant should bear the cost of her application as a result.

I make no findings of fact or law with respect to the substantive aspects of the Tenants claim for emergency repairs. This dismissal does not extend any time limitation that may apply under the *Act*.

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: September 26, 2022

Residential Tenancy Branch