



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction, Preliminary and Procedural Matters-

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied on February 17, 2022 for compensation from the respondent related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and to recover the cost of the filing fee.

The tenant SB attended the hearing and was affirmed. However, the respondent did not attend.

As the respondent did not attend, service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was considered. The tenants' evidence showed, and the tenant confirmed, that they served the respondent with the application package by leaving the documents at the real estate agent's office handling the sale of the residential property, on October 7, 2022.

In response to my inquiry, the tenant submitted that they did not remember getting the email from the Residential Tenancy Branch (RTB) after filing their application. The tenant said that they were being patient in waiting for the documents, as they did not know the timelines for receiving the documents to serve on the respondent and only inquired about them upon receiving an email from the RTB regarding evidence timelines.

Analysis and Conclusion

Section 59 (3) states that a person making an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

In this case, the evidence of the tenant is that they dropped of their documents at a real estate office on October 7, 2022. This date exceeded the 3 day time limit required for service, as the tenant was provided the application package containing the application and hearing notice on February 24, 2022, according to the internal RTB digital file on this application. It was upon the applicants to inquire with the RTB as to the status of their application within a reasonable time.

In addition, there was no clear evidence that the tenants used a correct address for service of the documents to the respondent.

I find that to proceed with the hearing would be procedurally and administratively unfair to the other party, the respondent, given the above circumstances.

For these reasons, I find the tenants submitted insufficient evidence that their application package was served to the respondent according to the required time frame under the Act. I therefore dismiss the tenants' application, **with leave to reapply**, due to service issues as described above.

I make no findings on the merits of the matter. As I have not considered the merits of the application, I dismiss the tenants' request for recovery of the cost of the filing fee, without leave to reapply.

Leave to reapply is not an extension of any applicable limitation period.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 11, 2022

Residential Tenancy Branch