



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Dismissal of Tenants' Application

The Tenants seek the following relief under the *Residential Tenancy Act* (the "Act"):

- an order pursuant to s. 67 for monetary compensation for loss or other money owed; and
- return of their filing fee pursuant to s. 72.

X.N. and T.N. appeared as the Tenants. A representative for the Landlord did not appear at the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

I canvassed issues with respect to service at the outset of the hearing. X.N. advised that he had mailed a document to the Landlord but was unable to confirm when it was sent and could not provide a copy of the registered mail tracking number. The Notice of Dispute Resolution in this matter was provided to the Tenant on March 9, 2022. Despite this, X.N. advised that the mail was sent around December 25, 2021. The Tenant also testified that he had a phone call from the Landlord in which aspects of this matter were discussed.

Rule 3.5 of the Rules of Procedure requires applicants to be prepared to demonstrate at the hearing service of their application materials. This is particularly important where, as here, the respondent does not attend.

Policy Guideline #12, which provides guidance with respect to the service provisions of the *Act*, states the following with respect to proof of service:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

[...]

Proof of service by Registered Mail or Express Post with signature option should include the original Canada Post Registered Mail/Express Post receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

[...]

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

It is the Tenants obligation to serve the Notice of Dispute Resolution and their evidence on the Landlord in accordance with the Rules of Procedure and s. 89 of the *Act*. They must also be prepared to demonstrate service at the hearing. The Tenants have failed to do so. I am unable to make a finding on when and how the Landlord was served with the application materials as no proof of service has been provided to me and the Tenants were unable to confirm service with adequate proof at the hearing.

As I am unable to make a finding with respect to service of the Tenants' application materials, I find it would be procedurally unfair to the Landlord to proceed without confirming they have proper notice of the application. Accordingly, the Tenants' claim under s. 67 of the *Act* for monetary compensation is dismissed with leave to reapply. As the Tenants were unable to demonstrate service, I find that they should not be permitted to reapply for their filing fee. Their claim under s. 72 of the *Act* for the filing fee is

dismissed without leave to reapply. They shall bear the cost of their failure to demonstrate service at the hearing.

No findings of fact or law are made with respect to the substantive issues in dispute in this application. 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: October 24, 2022

Residential Tenancy Branch