



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction and Preliminary Matters

On March 20, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, none of the three named Respondents made an appearance at any point during the 17-minute teleconference. At the outset of the hearing, the Tenant was informed that recording of the hearing was prohibited, and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:47 PM. Only the Tenant dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant was the only person who had called into this teleconference.

The Tenant initially advised that he served all three Respondents a separate Notice of Hearing and evidence package by registered mail on March 25, 2022 (the registered mail tracking number is noted on the first page of this Decision). However, he was informed that he only provided one registered mail tracking slip as proof of service, and that there should have been three separate registered mail tracking slips as each named Respondent was required to be served in accordance with Rule 3.1 of the Rules

of Procedure (the “Rules”). He insisted that he did serve each Respondent separately, but when he could not refer to three, separate tracking numbers, he then finally acknowledged that he only served one registered mail envelope, with three, separate Notice of Hearing packages included in that one envelope.

It was his position that Respondent A.T. was the property manager who had signed all of the documents related to the tenancy, and that Respondents S.G. and L.T. were the owners of the rental unit. He advised that he knew this because he received mail for S.G. and L.T. at the rental unit. As well, he cited a MLS Sale Data document, that was submitted as evidence, where it indicated that S.G. and L.T. were the owners of the rental unit, and that they sold it on January 18, 2022. Given that he did not have a service address for the owners, it was his position that as A.T. was the person representing the owners, by serving A.T. solely, it was the responsibility of A.T. then to pass these documents onto the owners. Thus, the owners would have then also been sufficiently served their Notice of Hearing packages that way.

Firstly, I find it important to reiterate that Rule 3.1 of the Rules requires that each named Respondent must be served a Notice of Hearing package individually. The reason for this is based on the principles of natural justice and administrative fairness. A party named in a hearing must be sufficiently notified of this by the Applicant, and once done, that party will then be afforded an opportunity to defend themselves against a claim. Despite A.T. appearing to represent the owners, I wholly reject the Tenant’s belief that A.T. should have, in turn, then served these documents on his behalf. I also do not accept the Tenant’s position that not serving S.G. and L.T. was a mere “technicality”.

In addition, I find it important to note that the Tenant was provided with a Dispute Resolution Process fact sheet that specifically instructed the following:

Within **three days** of the date the Proceeding Package is made available by the RTB, the applicant must serve **each respondent separately, even if they have the same mailing address** with the Proceeding Package as well as copies of evidence submitted with the application (“see “Preparing evidence” below). Note: these three days do not include the date the Proceeding Package is made available by the RTB.

The applicant must serve the Proceeding Package and evidence **on each respondent separately**, either:

- in person (by personally leaving a copy with each tenant, each landlord or the landlord’s agent); or
- by registered mail; or

- for a landlord's application for an order of possession only: by attaching it to the door or another conspicuous place or by personally leaving a copy with an adult who apparently resides with the tenant.
- by email to an email address provided for service

[Emphasis original]

As the Tenant only served one registered mail package, and failed to serve the other named Respondents accordingly, I am not satisfied that S.G. and L.T. were duly served their respective Notice of Hearing packages. As such, they have been removed from the Style of Cause on the first page of this Decision.

As an aside, given that the Tenant was perturbed about this development, and expressed concern that he did not know how he would find a service address for S.G. and L.T., he was provided with one method to do so, as an example. However, he was not receptive to this information, and insisted that the method with which he chose to serve these documents was acceptable. He was reminded that this was not sufficient, and that the hearing would proceed only against A.T.

Secondly, with respect to this Notice of Hearing package being served to A.T., the Tenant advised that he did not check the tracking history of this package; however, it was not returned to sender. Based on the evidence provided, and this solemnly affirmed testimony, I am satisfied that A.T. was duly served the Tenant's Notice of Hearing and evidence package. As such, this evidence will be accepted and considered when rendering this Decision.

In reviewing the totality of the evidence before me, it appears as if A.T., and the property management company that this person works for, noted themselves as the Landlord on the tenancy agreement and the Notice. However, I note that the reason the Notice was served was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." Furthermore, the Tenant was of the belief that S.G. and L.T. were the owners of the rental unit, and that A.T. and the property management company were merely representatives of the owners.

I accept that A.T. and the property management company would be considered a "Landlord" by definition of the *Act*. However, the evidence before me appears to indicate that they were acting as an agent on behalf of the owners. As such, I do not find that A.T., or the property management company, served the Notice because it was their

intention to move in, but this Notice was served on behalf of the owners. As such, I am not satisfied that A.T. was the appropriate party to file this claim against. Clearly, this dispute is between the Tenant and the owners of the property, and it is up to the Tenant to adequately serve the owners a notice of claim. Ultimately, as I am not satisfied of service to the appropriate parties, the Tenant's Application is dismissed with leave to reapply.

While the Tenant was not successful in this Application, I am satisfied that A.T. was sufficiently served the Notice of Hearing package, and this person should have attended the hearing to advise of their role in this tenancy or to shed light into any details of their involvement. As this person elected not to attend the hearing, I find that the Tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, the Tenant's Application is dismissed with leave to reapply.

However, the Tenant is provided with a Monetary Order in the amount of **\$50.00** in the above terms, and A.T. must be served with **this Order** as soon as possible. Should A.T. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 27, 2022

Residential Tenancy Branch