



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, RP, PSF, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on August 22, 2021 seeking:

- a. to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”)
- b. repairs made to the rental unit
- c. provision of services/facilities required by the agreement or law
- d. compensation for monetary loss
- e. the Landlord’s compliance with the legislation and/or the tenancy agreement
- f. reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 11, 2022.

Preliminary Matter – Notice of Dispute Resolution Proceeding to the Landlord

The Tenant attended the hearing, and I provided them the opportunity to present oral testimony and make submissions. The Landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution Proceeding (the “Notice”) for this hearing. This means the Tenant must provide proof that they served the document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out how they served the Notice to the Landlord via email. This was after they asked the Landlord specifically for their consent to this method of service, via a text messaging service, on June 16, 2022 (as stated in the hearing). This is after their Application was finalized on June 11, 2022 and sent to the Tenant on June 13, 2022 from the Residential Tenancy Branch. I note June 16 is the last day of the 3-day service requirement set out in s. 59(3).

The Tenant described sending an email to the Landlord based on the Landlord's consent to this method of service; however, the Tenant did not provide proof that such email actually existed. In the hearing, they could not locate the exact email they spoke of. Additionally, even though the Landlord gave consent via a text messaging app (also not in the Tenant's evidence) on the end-date allowed for service of the Notice, I cannot conclude that the Tenant did so on that same day, minus evidence showing that.

I note the Tenant filed a prior Application that was heard on July 14, and the Arbitrator adjourned that matter to allow the Tenant extra time to send that separate Notice to the Landlord via registered mail. The Tenant did not complete service as required in this present matter, despite that being an issue in a prior hearing.

The Tenant did not fulfill the service provisions under s.89 of the *Act*. I make this finding due to the delivery method of the hearing package not proven in the Tenant's evidence. There is no proof that the Landlord would receive that email. Therefore, I find the Notice was not served in a way recognized by s. 89 of the *Act* or the *Residential Tenancy Regulation* s. 43.

For this reason, I dismiss the Tenant's Application grounds a. through f. above with leave to reapply. I dismiss the Tenant's claim for reimbursement of the Application filing fee *without* leave to reapply.

Conclusion

For the reasons above, I dismiss the Tenant's Application with leave to reapply. There is no reimbursement of the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: October 12, 2022