



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The Applicants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to ss. 38 and 67 for the return of their security deposit; and
- return of their filing fee pursuant to s. 72.

L.W. appeared as the Applicant and was joined by her friend, C.M., who acted as interpreter. J.L. appeared as the Respondent.

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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of Application Materials

At the outset of the hearing, I enquired whether the Applicant had served the Respondent with her application and evidence. The Applicant indicated she had, though the Respondent denies receipt saying she received the Notice of Dispute Resolution from the Residential Tenancy Branch on or about December 6, 2022 and had not received any evidence from the Applicant.

I asked how the Applicant served her application and evidence. The Applicant was unable to provide a substantive answer, insisting that it was served on March 22, 2022. I note the Notice of Dispute Resolution was generated by the Residential Tenancy Branch on April 22, 2022.

Rule 3.1 of the Rules of Procedure requires applicants to serve the respondents with the Notice of Dispute Resolution provided to them by the Residential Tenancy Branch and any evidence upon which they intend to rely. Rule 3.5 of the Rules of Procedure requires applicants be prepared to demonstrate service of their application materials at the hearing.

Service of documents is a cornerstone to ensuring a procedurally fair process as it ensure that respondents know the claim being made against them and so everyone knows the evidence the other side is relying on. In this instance, I find that the Applicant has failed to demonstrate service of the Notice of Dispute Resolution and evidence.

As the Notice of Dispute Resolution was not served, I find that the appropriate course is to dismiss the application. To proceed without service would constitute a breach of procedural fairness. To adjourn the hearing to permit the applicants additional time to serve their materials would be similarly inappropriate as they have had many months to effectuate service and failed to do so.

To be clear, the applicants' claim for the return of the security deposit is dismissed with leave to reapply. The claim for return of the filing fee is dismissed without leave to reapply as I find the applicants should bear the cost of failing to serve their materials. The applicants are cautioned to ensure that they have served their application and evidence in accordance with the *Act* and the Rules of Procedure.

No findings of fact or law are made with respect to the substantive issues in dispute. 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: December 20, 2022

Residential Tenancy Branch