



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenants' security deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 13 minutes. The two tenants, tenant CT ("tenant") and "tenant LW," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. with me and the tenant present. Tenant LW called in late at 1:32 p.m. I did not discuss any evidence with the tenant in the absence of tenant LW. This hearing ended at 1:43 p.m. I monitored the teleconference line throughout this hearing. 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 two tenants and I were the only people who called into this teleconference.

Both tenants confirmed their names and spelling. The tenant provided the rental unit address. She provided her email address for me to send this decision to both tenants after the hearing, and tenant LW agreed to same. She identified herself as the primary speaker for both tenants at this hearing, and tenant LW agreed to same.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“*Rules*”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, both tenants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both tenants. I informed both tenants that I could not provide legal advice to them, and they could hire a lawyer for same. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Tenants’ Application

The tenant testified that the landlord was served with the tenants’ application for dispute resolution hearing package by way of registered mail on May 13, 2022. The tenants provided a Canada Post receipt with this application. The tenant confirmed the Canada Post tracking number verbally during this hearing.

The tenant said that the mail was sent to the rental unit address, where the tenants were sharing accommodation, including a kitchen and bathroom, with the landlord. She claimed that the landlord was not the owner of the rental unit. She stated that the landlord did not provide the rental unit as an address for service, but he lived there, as indicated in the parties’ two written tenancy agreements. She explained that she used the legal surname beginning with “S” of the landlord, in this application and when serving documents, not the landlord’s surname beginning with “M” in the parties’ tenancy agreements because it was his middle name, not his surname. She said that she used the landlord’s legal surname when she made e-transfers for rent payments.

Tenant LW said that he had the landlord’s Facebook account information which shows his legal surname of “S” not “M,” but it was not provided for this hearing.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

89 (1) An application for dispute resolution ..., when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*

- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;**
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

Proof of service by Registered Mail should include the original Canada Post Registered Mail 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.

I find that the tenants did not provide sufficient evidence that they served the landlord with the tenants' application, as required by section 89 of the Act and Residential Tenancy Policy Guideline 12.

I informed the tenants that they failed to provide sufficient documentary evidence of a valid and current residential or business address of the landlord, for service of their application. The two tenancy agreements provided by the tenants, were partially signed by one party only in each agreement, from September and October 2021. They do not include the landlord's address for service, only the rental unit address as shared accommodation. This application was filed in May 2022, so it is not clear whether the rental unit was still the landlord's current and valid residential address at that time.

I informed the tenants that they failed to provide sufficient evidence of the landlord's legal surname and whether they named the correct landlord-respondent party in this application. The two written tenancy agreements, the e-transfer documents from tenant LW, and the screenshot message from tenant LW, all show the landlord's surname beginning with "M." The text message from the tenant does not indicate a surname for the landlord. The e-transfer documents from the tenant show the landlord's name written by the tenant beginning with "S."

I informed the tenants that living accommodation in which the tenants share bathroom and kitchen facilities with the owner of that accommodation, is excluded by section 4(c) of the *Act*, in which case I would not have jurisdiction to decide this application. The tenants stated that the landlord was not the owner of the rental unit, but they did not know the full name of the owner. I notified them that they did not provide documentary evidence to confirm same, or the full name of the owner.

I also note that the tenants provided two separate written tenancy agreements for two different tenancies, with two different tenancy periods, rent amounts, and security deposit amounts. In this application, the tenants requested two different rent amounts and security deposit amounts to be returned by the landlord. However, the tenants only filed one application for two separate tenancies to be heard at this hearing. The tenants did not file two separate applications to be joined and heard together at the same time at this hearing.

The tenants had ample time from filing this application on May 1, 2022, to this hearing date of December 12, 2022, a period of almost 7.5 months, to provide correct, complete, and sufficient evidence, information, and applications. The landlord did not attend this hearing to confirm any of the above evidence or information.

For the above reasons, I notified the tenants that their application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed them that they could file a new application and pay a new filing fee, if they want to pursue this matter further. They confirmed their understanding of same.

Conclusion

The tenants' application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of the tenants' application is dismissed with leave to reapply.

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 12, 2022

Residential Tenancy Branch