



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction, Preliminary and Procedural Matters-

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for alleged damage to the rental unit by the tenants, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The landlord attended; however, the tenants did not attend the telephone conference call hearing.

As the tenants were not present, the matter of service of the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) to the tenants was considered.

In response to my inquiry, the landlord said the tenants were served with the landlord's application package by registered mail and by a server. The landlord said that their application package was placed in one envelope with all 5 tenants' names for the two methods of service. In addition, the landlord failed to file evidence with their application made on April 27, 2022, and instead filed all their supporting evidence on January 11, 2023. The landlord said the tenants were served the landlord's evidence by a server and registered mail, all in one envelope to the five tenants.

In response to my inquiry, the landlord provided a first or last name of the server; however, when pressed for more details, the landlord said a friend of that server served the documents to the tenant instead.

In addition, when asked, the landlord could not point to a breakdown of their monetary claim. The landlord said that they had a single page spreadsheet, but that document was too large to upload.

Analysis and Conclusion

Section 59(3) of the Act requires that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

Section 89(1) of the Act requires that an application for dispute resolution, which includes the notice of hearing, must be given by handing the documents to the person or by registered mail to, in this case, the tenant's address where they reside or to their forwarding address, as ordered by the director, or other means provided in the regulations.

I find the Act requires that each respondent/tenant be served separately in order to comply with these sections of the Act.

Additionally, the instructions to the applicant for dispute resolution makes it clear that each respondent is given their own unique Dispute Access Code.

Both parties have a right to a fair hearing and in this case, it would not be possible to know which tenant was served as the documents were in the same envelope, if any were served at all.

Residential Tenancy Branch (RTB) Rules of Procedure 3.5 states that at the hearing, the applicant must be prepared to demonstrate service to the satisfaction of the arbitrator.

In the case before me, I find that the landlord submitted insufficient evidence to show that any tenant was served by personal service or registered mail. The landlord failed to have the service person attend the hearing or provide an affidavit. However, in any case, the landlord confirmed that if any service was made, the documents were in one envelope to the five respondents.

Further, I find that the application provided insufficient particulars of the landlord's claim for compensation, as is required by section 59(2)(b) of the Act. Additionally, Rule 2.5 states that the applicant must submit a detailed calculation of any monetary claim being

made and copies of all other documentary and digital evidence to be relied on in the proceeding. Applicants are provided with instructions in the application package as to these evidence requirements. The RTB provides monetary order worksheet forms that parties may use to detail their monetary claim.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

I find that proceeding with the monetary claim at this hearing would be prejudicial and procedurally unfair to the other party, as the absence of particulars that sets out how the landlord arrived at the amount being claimed makes it difficult, if not impossible, for the other to adequately prepare a response to the claim.

Both parties have the right to a fair hearing and the respondents are entitled to know the full particulars of the claim made against them at the time the applicant submits their application in order to prepare a response.

As I find the landlord submitted insufficient evidence that their application package was served to the tenants according to the requirements of sections 59(3) and 89(1) of the Act and that the landlord provided insufficient particulars of their monetary claim, I therefore **dismiss** the landlord's application, **with leave to reapply**.

Leave to reapply does not extend any applicable time limitation deadlines.

As I did not proceed with the landlord's application, I **dismiss** the landlord's request for recovery of the cost of the filing fee, without leave to reapply.

I note that the landlord did provide a Canada Post tracking number said to be for service of the evidence. A search of the Canada Post website using that tracking number shows a mailing on December 23, 2022, sent to a city where the tenants do not reside, according to the landlord's application.

Although I have dismissed the landlord's application claiming against the tenants' security deposit, I decline to order the landlord to return the security deposit as there was no proof the tenants provided a written forwarding address.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 26, 2023

Residential Tenancy Branch