



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **MNSD, FFT**

Landlord: **MNDL, MNDCL, FFL**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The tenant applied for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- A monetary order for damages caused by the tenant or the tenant's guests pursuant to sections 7 and 67;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord did not attend the hearing although the teleconference connection remained open throughout from 1:30 p.m. to 1:45 p.m. 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 and I were the only ones who had called into this teleconference. The tenant attended the hearing and had the opportunity to provide testimony.

Preliminary Issue

The tenant testified she was never served with a copy of the landlord's application for dispute resolution and had no idea the landlord had filed one. The tenant testified she did not recognize the name of the person named as landlord in the landlord application for dispute resolution, (CSD) stating she has never met that person.

The tenant testified that she served the landlord (JD) with her application for dispute resolution and the Notice of Dispute Resolution Proceedings by placing a copy of the documents in the mailbox of JD's residence on July 6, 2022. When I pointed out that the Notice of Dispute Resolution Proceedings was sent to the tenant on August 16, 2022, over a month after the tenant allegedly served it, the tenant could not explain why. The tenant provided no other proof of service.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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 document]...*

Rule 3.5 of the Residential Tenancy Branch Rules of Procedures states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. Part 15 of PG-12 speaks specifically to proof of service.

15. PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The landlord (CSD) did not attend this hearing to satisfy me the tenant was served with a copy of the landlord's Notice of Dispute Resolution Proceedings package. The tenant specifically testified she was not provided with a copy of it and testified she does not recognize the person who filed the application as landlord. Consequently, I dismiss the landlord's application for dispute resolution with leave to reapply as the application was not served in accordance with section 89.

Likewise, the tenant was unable to provide proof she served the landlord (JD) with a copy of her Notice of Dispute Resolution Proceedings package in any of the ways specified under section 89. I also dismiss the tenant's application with leave to reapply.

Conclusion

Both applications are dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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: April 27, 2023

Residential Tenancy Branch