



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding PROMPTON REAL ESTATE SERVICES
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S MNDCL-S FFL

Introduction and Analysis

This dispute relates to a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. \$11,249 for compensation under the Act,
2. Retain security deposit,
3. Filing fee.

The Agent attended the teleconference and was affirmed. The hearing process was explained and an opportunity to ask questions was provided. The Agent confirmed that the tenant vacated the rental unit on September 22, 2020. The hearing was held on June 12, 2023.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated September 27, 2022 (Notice of Hearing), application and documentary evidence were considered. The Agent had applied for an order permitting substituted service which was denied on October 11, 2022. That Interim Decision should be read in conjunction with this decision.

The Agent affirmed that when the landlord attempted to serve the tenant by email, they selected a "read receipt" and that the read receipt was never returned to the landlord in support that the tenant received and read the email service of the Hearing Package.

In addition, the Agent testified that the landlord hired a tracking company who was unsuccessful in locating the tenant to be served.

The tenant has a right to a fair hearing and would not be aware of the hearing without having received the Hearing Package.

In determining whether leave to reapply is granted, I have considered section 60(1) of the Act, which applies and states:

Latest time application for dispute resolution can be made

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

[emphasis added]

In the matter before me, the tenancy ended on September 22, 2020, which makes the last possible date to apply September 22, 2022, which has passed.

The Agent testified that they applied in an earlier application, but that too was dismissed due to a service issue. I do not grant leave to reapply as the landlord is now barred at law from reapply under the Act due to section 60(1) of the Act. I decline to award the filing fee due to the service issue.

Conclusion

The application has been dismissed without leave to reapply due to service and the fact that any future application is now outside of the 2-year timeline as described above.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 12, 2023

Residential Tenancy Branch