



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ONNI PROPERTY MANAGEMENT SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT, MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was set to deal with monetary cross applications. The tenant applied for return of the security deposit and compensation for damages or loss under the Act, regulations or tenancy agreement. The landlord applied for unpaid rent, compensation for damage to the rental unit and other damages or loss under the Act, regulations or tenancy agreement. The landlord also requested authorization to retain the tenant's security deposit.

Two agents appeared for the landlord; however, there was no appearance on part of the tenants.

Service of hearing materials

The landlord's agents testified that the tenant did not serve the landlord with his proceeding package. In the absence of any evidence to the contrary, I accepted this to be accurate and I dismiss the tenant's application with leave to reapply.

The landlord's agent testified that they sent the landlord's proceeding package and evidence to the tenants via registered mail on April 19, 2023 but the registered mail was returned as unclaimed.

I noted that the landlord's proceeding package was generated by the Residential Tenancy Branch ("RTB") on February 14, 2023. Since the tenants were not in attendance and the delay in service, I enquired as to where the registered mail was sent and how the landlord obtained that address.

The landlord's agents testified that the tenants vacated the rental unit in early November 2022 and did not provide a forwarding address. The landlord's agent testified that he

made the landlord's Application for Dispute Resolution in February 2023 but did not know the tenant's forwarding address so the landlord listed the rental unit as the tenant's service address as this is their practice when they do not have a forwarding address for a tenant; however, when the landlord later noticed that the "combined" Notice of Dispute Resolution Proceeding contained a different service address for the tenant the landlord then sent the proceeding package and evidence to the tenants at this other address on April 19, 2023.

Where a party to a dispute does not appear at the hearing, the applicant bears the burden to prove service occurred in a manner that complies with Act.

Section 59 of the Act provides that an Application for Dispute Resolution must be served upon each respondent within three days of making the Application for Dispute Resolution. The landlord's proceeding package was prepared on February 14, 2023 but the landlord's agent testified that it was not sent to the tenants until April 19, 2023 which is well beyond the landlord's three day deadline.

Section 89(1) of the Act provides for the ways an Application for Dispute Resolution and other required documents for a monetary claim must be served upon each of the respondents. Registered mail is a permissible method of service under section 89; however, the address for mailing must be either: the respondent's address of residence at the time of mailing, or if the respondent is a tenant, the forwarding address provided by the tenant.

The landlord's agent stated they use the rental unit address if they do not have a forwarding address for a tenant; however, when a tenant has already vacated the rental unit, the rental unit is no longer the tenant's address of residence. Thus, sending registered mail to the rental unit is insufficient.

The landlord's agent testified that they noticed a different service address for the tenant after they received the "combined" Notice of Dispute Resolution Proceeding from the RTB even though no such document exists for cross applications. Also, RTB records show the landlord was given a courtesy copy of the tenant's Notice of Dispute Resolution Proceeding and Application for Dispute Resolution when the landlord contacted the RTB to ask whether the tenant filed a claim against the landlord prior to the landlord filing its Application for Dispute Resolution. Accordingly, I find the testimony of the landlord's agents is inconsistent with RTB records.

The courtesy copy of the tenant's Application for Dispute Resolution included a "service address" for the tenant as of November 28, 2022. However, having heard the tenant

did not serve the landlord with that document, I find the landlord was not in receipt of a “forwarding address provided by the tenant”. Nor, did the tenants appear at the hearing to confirm this address was their address of residence when the landlord mailed its proceeding package to the tenants or their forwarding address. I also noted that only one tenant had filed the tenant’s Application for Dispute Resolution but the landlord was relying upon the service address to send registered mail to both tenants.

In light of the above, I find I am not satisfied the landlord complied with the service requirements of sections 59 and 89 of the Act and I declined to further hear the landlord’s claims against the tenants. The landlord’s Application for Dispute Resolution is dismissed with leave to reapply.

Conclusion

The Application for Dispute Resolution filed by each party is dismissed with leave to reapply due to insufficient service.

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: September 13, 2023

Residential Tenancy Branch