

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord testified that he served the Tenant with the Proceeding Package via registered mail. The Landlord testified that the Proceeding Package was "maybe" mailed in the first week of October 2023. No proof of service documents pertaining to the above mailing were entered into evidence. The Landlord was unable to provide the tracking number for the above mailing in the hearing. The Tenant testified that she did not receive the Proceeding Package.

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

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.

I find that the Landlord did not prove that the Tenant was served with the Proceeding Package via registered mail as no proof of service documents were entered into evidence, the Landlord could not provide the date the Proceeding Package was allegedly served or the tracking number for the mailing.

The Landlord testified that he also served the Tenant with the Proceeding Package on September 9, 2023 via email. The Landlord entered into evidence the September 9, 2023 serving email. The Tenant testified that she did not receive the Proceeding Package via email. The Landlord testified that he did not have a written e-mail service agreement with the Tenant.

Residential Tenancy Branch Policy Guideline #12 states that to serve documents by email, the party being served must have provided an email address specifically for the purpose of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

I find that the Tenant did not provide the Landlord with authorization to serve her via email. Therefore, the Landlord was not permitted to serve the Tenant with the Proceeding Package via email.

The landlord's application is dismissed, with leave to reapply, for failure to prove service in accordance with section 89 of the *Act*.

Conclusion

The Landlord's Application for Dispute Resolution 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 *Act*.

Dated: February 1, 2024

Residential Tenancy Branch