

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 damage to the rental unit or common areas under sections 32 and 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

This hearing also dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord ML attended the hearing.

Tenants QL and YX also attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants were served by registered mail on December 19th, 2024. The Landlord provided a proof of service form and a receipt, and the Tenants acknowledged such service.

I find that the Landlord was not served under the Act. Although the Tenant submitted a receipt showing that the Notice of Dispute Resolution was sent via UPS on December 10th, 2024, by courier, the tracking information indicates that it was never delivered or picked up by the Landlord. Service via courier was permitted during this pursuant to an Order of the Director dated November 15th, 2024 authorizing service by courier. That order requires that, "the courier leaves a notice of attempted delivery in the mailbox or posted to the door; or if the courier is not able to leave the notice of attempted delivery in the mailbox or posted to the door, the courier leaves the notice of attempted delivery

in a conspicuous place and the sender provides proof that they have attempted to contact the recipient by telephone or email to inform the recipient of the attempted delivery.” The Tenants did not submit any evidence that either of these procedures was followed through, and the tracking information publicly available from UPS does not indicate if a notice of attempted delivery was left, or where it was placed if it was left. In the absence of evidence that the Director’s order was complied with, I am unable to find that the Notice of Dispute Resolution should be deemed to be served under section 72 of the Act.

Service of Evidence

The Tenants testified that they had received no evidence from the Landlord, and that the Landlord’s Proceeding Package contained the Notice of Dispute Resolution, being four pages long, and two additional pages of information from the RTB.

The Landlord testified that she had printed out and sent her evidence as part of the Proceeding Package, and that this formed a large volume of paper. The Landlord’s evidence uploaded to the RTB included approximately 26 image files. However, the receipt provided for the mailing indicates that the weight of the package was only 33 grams. I find this weight is consistent with the weight of six pages and an envelope, and inconsistent with a more substantial package containing significantly more pages of evidence.

I therefore find that the Landlord’s evidence was not served to the Tenants.

Preliminary Matters

Because the Tenant’s application was not served to the Landlord, the Tenant’s application is dismissed with leave to reapply.

The Landlord’s application is highly dependent on documentary evidence. I have reviewed the nature of the Landlord’s evidence, and I find that the lack of service would be prejudicial to the Tenants’ ability to respond to the Landlord’s application. As a consequence, I find that it is appropriate to dismiss the Landlord’s application with leave to reapply.

Conclusion

Accordingly, I order the Landlord’s application dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Likewise, I order the Tenants’ application dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

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: January 29th, 2025

Residential Tenancy Branch