



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution that was made on March 31, 2016. The landlord applied requesting compensation in the sum of \$7,335.36 for damage to the rental unit, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

A hearing was held on August 25, 2016. The tenants attended; the landlord did not. A decision was issued on August 25, 2016, dismissing the landlords' application.

On September 1, 2016 the landlord applied requesting review consideration of the August 25, 2016 decision. On September 7, 2016 a review consideration decision was issued, suspending the August 25, 2016 decision and granting the landlord a new hearing. The new hearing was scheduled to be heard on November 1, 2016. The landlord was required to serve each tenant with Notice of the new hearing and a copy of the review consideration decision.

The landlord attended the new hearing held at 9:00 a.m. on November 1, 2016. Neither tenant attended. The landlord provided affirmed testimony on service to the tenants.

The landlord sent the male tenant a text on May 16, 2016. That text included the tenants' fathers address, which the landlord said she would use. The tenant replied "go ahead." The landlord confirmed that neither tenant provided a written forwarding address.

On September 20, 2016 the landlord served each tenant with the hearing documents for this new hearing, by registered mail to the tenants' fathers address. A check of the Canada Post tracking information showed that on September 21, 2016 each package was refused and was being returned to the landlord.

The landlord had copies of the hearing documents and then served the documents a second time, to the male tenants' fathers' address. The registered mail was sent to each respondent on September 28, 2016. That mail had a return address for the Residential Tenancy Branch (RTB.) The mail was returned to the RTB, each marked as "not at this

address.” The Canada Post stamp on the mail indicated that the recipients had both moved.

The landlord said that she went to the address and was told by the tenants’ father that she should leave the property. The landlord knows the male tenants’ father. When asked, the landlord confirmed that the tenants’ family was not indicating any desire to assist with service of documents.

From the evidence before me I find that the landlord has attempted to serve the tenants to an address that was not given as a forwarding address by the tenants. The mail sent on September 20, 2016 was returned as refused, but I do not know if it was refused by the tenants as there was no evidence before me that either of the tenants actually reside at that address. The tenants’ response to the landlords’ text message does not provide any assurance that the address the landlord used was in fact agreed to as a forwarding address. Given the mail that was returned to the RTB, I find it is just as likely that it was the tenants’ family who refused the mail sent on September 21, 2016. The next attempt at service indicates that the tenants do not reside at the address used for service.

Therefore, I find that the landlord has not proven that either tenant was served with Notice of this hearing to an address where the tenants reside. As a result I find pursuant to section 82(3) of the Act that the review consideration decision issued on September 7, 2016 is set aside.

I find that the application is dismissed with leave to reapply in accordance with section 60 of the Act.

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.*

(2) *Despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).*

(3) *If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.*

The landlord stated that the tenancy ended on March 31, 2016.

Conclusion

The decision issued on August 25, 2016 is set aside.

The application is dismissed with leave to reapply within the legislated time limit set out in section 60 of the Act.

This review consideration decision is final and binding 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: November 01, 2016

Residential Tenancy Branch

