



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary award, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlord ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The owner of the rental unit, CZ ("owner") who was not named in this application, called into the teleconference and confirmed that he gave the landlord named in this application permission to speak on his behalf as an agent at this hearing. The owner did not provide any testimony at this hearing but attended to observe.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with a copy of the landlord's application for dispute resolution hearing package on June 24, 2016, by way of registered mail. The landlord provided a Canada Post tracking number verbally during this hearing. The landlord said that he mailed the package to an address provided by the tenant in her rental application on July 20, 2015. The landlord provided a copy of this rental application.

The landlord said that this address was the tenant's former address and that the tenant advised him by way of text message that he could use this same address, as it was her sister's address, after the tenancy was over. He said that the tenant sent him another text message saying that she received the landlord's package but could not attend the hearing. The landlord said that he did not provide a copy of these text messages

because he did not know how to submit it to the Residential Tenancy Branch (“RTB”) and it was too late to send it before the hearing.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (emphasis added):

89 (1) An application for dispute resolution ..., when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;...

*(c) by sending a copy by registered mail to the **address at which the person resides** ...;*

*(d) if the person is a tenant, by sending a copy by registered mail to a **forwarding address provided by the tenant**;*

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

I find that the landlord failed to provide sufficient evidence that the tenant was served with the landlord’s application at an address at which she was residing or a forwarding address provided by her, in accordance with section 89(1) of the *Act*. The tenant did not attend this hearing. The person that signed for the mail package according to the Canada Post website tracking number provided by the landlord, was not the tenant. The landlord said that he mailed the package on June 24, 2016, but the tracking number indicates it was sent on June 25, 2016.

I find that the landlord did not provide sufficient documentary evidence of the tenant’s current address for service. The landlord did not provide the text messages indicating that the tenant provided the forwarding address to him or that she received the package. Yet, the landlord provided other text messages between both parties, with his application. The tenant’s rental application was provided but only shows a former address with a different landlord given on July 20, 2015, almost one year prior to when the landlord’s application was filed on June 23, 2016.

As the landlord failed to prove service in accordance with section 89(1) of the *Act*, I find that the tenant was not served with the landlord’s application. At the hearing, I advised the landlord that I was dismissing his application with leave to reapply, except for the filing fee.

After I provided the landlord with my decision, he became increasingly upset, repeatedly interrupted me, began arguing with me, and said that I was “biased” against him. When I questioned the landlord as to what he meant, he said that the tenant had not attended the hearing so my decision was biased because I made it in the tenant’s absence. I

notified the landlord that I was not biased against him and that he failed to meet the required standard for service in order for me to hear the merits of his application. The landlord said that the tenant would not provide an address for service to him if she was trying to avoid paying rental arrears. I notified the landlord that he was required to properly serve the tenant and I explained the requirements for service to the landlord.

I caution the landlord to review Rule 6.10 of the RTB *Rules of Procedure*, prior to attending any future hearings at the RTB:

Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

I caution the landlord not to engage in the same rude and disrespectful behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that case, a decision will be made in the absence of the landlord.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application 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 *Residential Tenancy Act*.

Dated: December 20, 2016

Residential Tenancy Branch