



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

The landlord sought an order of possession, a monetary order for unpaid rent, and compensation for the filing fee, pursuant to sections 46, 55, 67, and 72, respectively, of the *Residential Tenancy Act* (the “Act”).

A dispute resolution hearing was held on May 2, 2019 and the landlord and her son, who was assisting her, attended.

I have reviewed evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but only evidence relevant to the preliminary issue of the application is considered in my decision.

Preliminary Issue: Service of the Notice of Dispute Resolution Proceeding

The landlord, through her son, testified that she could not recall, or, was not certain as to whether or when she served the tenant with the Notice of Dispute Resolution Proceeding. In addition, there was no documentary evidence on file to establish that the Notice of Dispute Resolution Proceeding had been served on the tenant, nor any other information indicating that the tenant was aware of this hearing.

Rule 3.1 of the *Rules of Procedure*, under the Act, requires that an applicant serve a copy of the Notice of Dispute Resolution Proceeding, along with all their evidence, within 3 days of the Residential Tenancy Branch providing the applicant with a copy of the Notice of Dispute Resolution Proceeding. Similarly, section 59(3) of the Act states that an applicant must provide a copy of this notice to the respondent within 3 days.

As I explained to the landlord and her son, it is crucial that the opposing side be given notice that there is a hearing. The principles of natural justice and administrative fairness require that the party against whom a claim is being made is (1) put on notice of any such claim, and (2) given the opportunity to defend themselves against the allegations.

Rule 3.5 of the *Rules of Procedure* states that

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.

In this case, the landlord was unable to establish to my satisfaction that the respondent was served with the Notice of Dispute Resolution Proceeding package and all evidence. Accordingly, I must dismiss the landlord's application with leave to reapply.

Finally, as I explained to the landlord's son, the landlord may reapply (and ensure that the former tenant be given a copy of the Notice of Dispute Resolution Proceeding) at any time within 2 years after the tenancy ended.

Conclusion

I dismiss the landlord's application 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: May 2, 2019

Residential Tenancy Branch