



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT MNSD FFT

Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Only the tenant attended the hearing. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:59 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of Notice of Dispute Resolution Proceeding Documents

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he had served the notice of this hearing to the person he stated to be the property manager of the rental property, with instructions to provide the package to the landlord, as the property manager and the landlord worked together.

The tenant did not submit a signed proof of service, nor was the property manager available to provide witness testimony at the hearing to confirm service of the notice of hearing documents to the landlord.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedures sets out the requirement of an applicant to demonstrate proof of service:

3.5 Proof of service required at the dispute resolution hearing:

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.

Pursuant to Rule 3.5 noted above, I do not find that the Notice of this hearing was served by the tenant to the landlord as required by the *Act* and the Rules of Procedure, as the tenant was unable to provide proof of service.

The tenant's application is dismissed in its entirety, with leave to reapply. I make no findings on the merits of the matter. The issuance of this decision with leave to reapply does not extend any applicable time limits under the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? If so, is the tenant entitled to a monetary award equivalent to the value of the security deposit because of the landlord's failure to comply with section 38 of the *Act*?

Is the tenant entitled to a monetary award as compensation for damage or loss due to the landlord's failure to comply with the *Act*, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Conclusion

As noted above, I dismiss this Application for Dispute Resolution in its entirety 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: September 12, 2019

Residential Tenancy Branch