



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with the tenants application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing and the tenant IA (“tenant”) also attended the hearing. As both parties were present, service of documents was confirmed.

The landlord testified that he was not served with the tenant's Notice of Dispute Resolution Proceedings package. He learned about the hearing when he received an email from the Residential Tenancy Branch regarding uploading evidence. He then contacted the Residential Tenancy Branch and was provided a copy of the Notice of Dispute Resolution Proceedings emailed to him by the information officer at the Residential Tenancy Branch. He did not receive any of the tenant's evidence.

The tenant first testified that he “thought” his mother may have “dropped the papers off” at the landlord's residence although he wasn't sure about it. He can't remember when it may have been done and his mother was not available to testify. The tenant acknowledges he did not serve the Notice of Dispute Resolution Proceedings package himself.

Preliminary Issue – Service of Notice of Hearing/Application for Dispute Resolution Proceedings

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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;*
- b. if the person is a landlord, by leaving a copy with an agent of the landlord;*
- c. by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- 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 document]...*

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. Part 15 of PG-12 speaks specifically to proof of service.

15. PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

Based on the tenant's lack of evidence regarding service, I am not satisfied that the landlord was properly served with the Notice of Dispute Resolution Proceedings or any of the tenant's evidence. Consequently, I dismiss this application with leave to reapply.

Conclusion

This 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: November 23, 2020

Residential Tenancy Branch