



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:50 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant testified that he was not recording this dispute resolution hearing.

The tenant confirmed his email address for service of this decision.

Preliminary Issue- Service

The tenant testified that the landlord named in this application for dispute resolution is the owner of the subject rental building. The tenant testified that he personally served the building manager, who is an agent of the landlord, with this application for dispute resolution on March 14, 2021. The tenant did not enter into evidence any proof of

service documents to prove the above testimony. The tenant testified that he had a witness to the above service. I kept the hearing line open until 1:50 p.m. to enable the tenant's witness to call in. The tenant's witness did not call into the hearing. The tenant telephoned his witness two times during the hearing; however, the witness did not pick up.

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]...*

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

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.

Rule 7.19 of the Rules states:

Parties are responsible for having their witnesses available for the dispute resolution hearing. A witness must be available until they are excused by the arbitrator or until the dispute resolution hearing ends.

I find that the tenant has not proved, on a balance of probabilities, that the landlord was served with this application for dispute resolution in accordance with section 89(1) of the *Act* because the landlord did not attend, no proof of service documents were entered

into evidence and the tenant's witness was not available to provide testimony during the hearing.

At the hearing, I advised the landlord that I was dismissing this application with leave to reapply. I notified the tenant that if he wished to pursue this matter further, he would have to file a new application. I cautioned him to be prepared to prove service at the next hearing, as per section 89(1) of the *Act*.

Conclusion

The tenant'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: July 26, 2021

Residential Tenancy Branch