Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, FF

Introduction, Preliminary and Procedural Matters -

This hearing dealt with the landlords' application for dispute resolution made April 6, 2020, seeking remedy under the Residential Tenancy Act (Act). The landlords applied for:

- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlords, their interpreter, and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

When confirming with the landlords' service of their application for dispute resolution to the tenant, the landlords provided different dates. Ultimately, the landlords said they

delivered their application package to the tenant's son, who was 19 or 20, on May 2, 2021.

The tenant said his son did not receive the landlords' application, rather, it was put in their mailbox. The tenant also said there was no evidence included with the application.

In response to my inquiry, the landlords ultimately confirmed that they did not include their evidence with their application. The evidence included copies of the utility bills and a billing history, which was the basis of this claim.

It must be noted that these parties have been in previous dispute resolution hearings on various issues. The landlord confirmed that the utility bills were filed in evidence for other hearings.

It must also be noted that I learned the tenant had another dispute resolution application pending, which was filed on October 6, 2021, and is set for hearing on May 19, 2021.

Although this application was filed beyond two years from the date the tenancy ended, or December 31, 2018, I determined that the application was not barred due to the limitation period. By section 60(3) of the Act, I determined that the landlords were entitled to file this application due to the tenant's previous application made within the applicable limitation period. The tenant's previous application was filed December 18, 2020, and concluded on June 9, 2021, when another arbitrator made a final decision.

I have made reference to previous files referred to in this matter, on the style of cause page of this Decision. I note that on the final Decision of June 9, 2021, that arbitrator referred to two other files regarding these parties, on the style of cause page.

Analysis

Section 59(3) states that an applicant for dispute resolution must give a copy of the application to the other party within 3 days.

Section 89(1) of the Act requires that the landlord's application for dispute resolution, which includes the notice of hearing, must be given by personally handing the documents to the tenant, by registered mail to the tenant's address where they reside or to their forwarding address, or by other means of service provided for in the regulations.

Under the Residential Tenancy Branch Rules of Procedure (Rules), all evidence available to the applicant **must** be served in one package and served to the respondent.

Here, the landlord said that they served the tenant by leaving their application with the tenant's son. The tenant denied that his son received the application, as it was left in his mailbox. Additionally, the landlords confirmed that regardless of the method of service, they did not serve a complete application package, as their evidence was not included with it.

For these reasons, I find the landlords submitted insufficient evidence that a complete application package, with evidence, was properly served to the tenant according to the requirements of section 89(1) of the Act. I therefore dismiss the landlords' application, with leave to reapply.

Leave to reapply does not extend any applicable limitation periods.

As I did not proceed with the landlords' application, I decline to award them recovery of the filing fee.

The parties were informed at the hearing that all dispute resolution applications stand on their own and that evidence does not transfer from one application to the other. Typically, an arbitrator is not aware of other dispute resolution matters between the parties, unless specifically mentioned in the evidence or at the hearing. If the parties want evidence to be considered at any future hearing, it must be submitted for that application.

Conclusion

The landlords' application was dismissed with leave to reapply, due to service issues as described above.

I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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*. Pursuant to

section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 21, 2021

Residential Tenancy Branch