



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on November 3, 2021 seeking compensation from the Landlord. This is related to the Landlord’s issuance of a Notice to End Tenancy for the landlord’s Use of Property (the “Two-Month Notice”) issued on June 30, 2021. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 17, 2022. Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Issue – service of the Notice of Dispute Resolution

The Landlord in the hearing provided they did not receive the Notice of Dispute Resolution directly from the Tenant. They received an evidence timeline notification from the Residential Tenancy Branch, and this was due to the hearing being rescheduled from June 7. Upon learning of this hearing, the Landlord provided documents to the Tenant and the Residential Tenancy Branch. The Tenant stated they received the Landlord’s evidence the day prior to this June 17 hearing. The record shows the Landlord provided their evidence to the Residential Tenancy Branch on the day before the hearing.

In the hearing the Tenant stated they used the Landlord’s address as it appeared on the Two Month Notice to End Tenancy for Landlord’s Use of Property, issued on June 30, 2021. The Tenant’s registered mail was returned to them as unclaimed.

The Tenant noted they received the Landlord's own mail at the rental unit, for the entire duration of this 4-year-long tenancy. Additionally, the Tenant made their Application at the beginning of November 2021 – this was approximately four months after the end of the tenancy when they moved out from the rental unit on July 1, 2021.

The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution. Subsection (3) states: “. . .a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.”

The *Act* s. 89 gives the rules for service of the application for dispute resolution. This is by leaving a copy with the person or their agent or sending a copy via registered mail.

Additionally, the *Residential Tenancy Branch Rules of Procedure* are crafted to ensure a fair process, and these specify the documents to be served by the applicant (here, the Tenant) to the respondent (here, the Landlord). These are: the Notice of Dispute Resolution Proceeding provided when applying; the Respondent Instructions for Dispute Resolution; a process fact sheet; and other evidence submitted by the applicant.

I find the Tenant did not provide a copy of the Notice of Dispute Resolution Proceeding – that document that is generated when a person applies for dispute resolution and here issued to the Tenant on November 5, 2021 – to the Landlord. The Tenant did not ensure delivery to the Landlord within a reasonable period of time. I find the Tenant did not make reasonable inquiry to ensure the very important service to the Landlord, in light of knowing the Landlord's stated intention was to live in the former rental unit, as well as the fact that the Landlord's mail was arriving to that same rental unit home for the entirety of the tenancy. Additionally, the Landlord's evidence shows the Tenant closely communicated with them via direct text messages and it is not too high an expectation for the Tenant to inquire on a proper address or alternative means of service to the Landlord.

The *Act* requires proper service in line with administrative fairness in which a party's legal rights and obligations are challenged. Even though the Landlord provided a response immediately prior to the hearing on June 17, I find they were prejudiced by the lack of notification from the Tenant. I dismiss the Tenant's Application for Dispute Resolution for this reason.

Conclusion

I dismiss the Tenant's application for compensation, with leave to reapply. This decision does not impact any deadlines as set forth in the *Act*. I dismiss the Tenant's claim for reimbursement of the filing fee without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 6, 2022

Residential Tenancy Branch