



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT FFT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

EP ("tenant") represented the tenant in this hearing. Three other parties also appeared. MK attended the hearing and testified that although they were served and named in this application, they had no connection to the landlord or new owners for this case. Two other parties, SMS and SAS, attended the hearing. All parties in attendance were clearly informed of the RTB Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. All parties confirmed that they understood.

Preliminary Issue – Service of the Application and Naming of Parties

SMS and SAS identified themselves as the new owners of the property. SMS and SAS testified that they were not named in the tenant's application, nor were they served with the tenant's application. SMS and SAS testified that they only became aware of the hearing after they received a message from their realtor that an application was filed in relation to the property. SMS and SAS were provided with the information to dial into the teleconference, but testified that they did not have any knowledge about what this application or hearing was about.

The tenant confirmed that they had sent a package by way of registered mail to an address based on the information they had been provided by their previous realtor. The tenant testified that a package was also dropped off at the old rental address to parties the tenant believes to be the new tenants at the property.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents].

Not only am I not satisfied that the proper parties were named in this application, I find that the tenant has not met the requirements of section 89 of the *Act* for service of their Application package on the appropriate parties. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them and have an opportunity to review and respond to the materials submitted, the tenant's application for monetary compensation is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

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, 2022