



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 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. An Articled Student representing the tenants 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 Articled Student and I were the only ones who had called into this teleconference.

The Articled Student confirmed his email address for service of this Decision.

Preliminary Issue- Service and Attendance of Counsel

The Articled Student submitted that counsel for the tenants is currently in Iran and is unable to attend due to the conflict in that country and the lack of current internet availability. The Articled Student submitted that despite counsel's inability to attend, he was instructed to continue with the hearing in the absence of counsel. The Articled Student did not request an adjournment.

The Articled Student submitted that counsel for the tenants served the landlord with this application for dispute resolution; however, he did not know when that service occurred and did not have a copy of the Registered Mail receipt. No proof of service documents were entered into evidence.

I accept the Articled Student's submissions pertaining to the whereabouts of counsel for the tenant and the reasons for his absence. As the Articled Student elected to continue with the hearing and did not request an adjournment, an adjournment was not granted.

Rule 3.5 of the Residential Tenancy Branch Policy Guideline 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.

I find that the Articled Student has not proved, on a balance of probabilities, that the landlord was served with tenants' application for dispute resolution in accordance with the *Act* because no proof of service documents were entered into evidence and counsel was unavailable to provide submissions on service. The tenant's application for dispute resolution is therefore 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: October 11, 2022

Residential Tenancy Branch