



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's agent attended the hearing and affirmed to tell the truth.

Both parties confirmed their email address for service of this decision.

The tenants testified that they served the landlord with their application for dispute resolution via registered mail, but could not recall on what date. The tenants entered into evidence a registered mail receipt dated September 25, 2022, and a registered mail customer receipt. No other evidence was submitted for consideration. The customer receipt was left blank and did not state what address the registered mail was sent to.

The landlord testified that she did not receive the tenants' application for dispute resolution and only learned of this hearing in the last week from the people currently residing in the subject rental property. The agent testified that the landlord called into the Residential Tenancy Branch and was provided with a courtesy copy of the Notice of Dispute Resolution Proceeding. The Dispute Management System confirms that the landlord called in on May 31, 2023 and stated that she was not served with the tenants' application for dispute resolution.

In the hearing the tenants provided the address at which they served their application for dispute resolution, which they testified they got from a title search of the subject rental property. The title search was not entered into evidence. The landlord testified that the address provided by the tenants is her parents' address. The agent testified that the landlord's parents do not recall receiving any mail for the landlord.

Rule 3.5 of 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.

Section 89(1) of the *Act* states that 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*].

[Emphasis added]

The registered mail customer receipt is blank, and no other documentary evidence establishes where the registered mail was sent. The landlord testified that she did not receive the tenants' application for dispute resolution. I find that the tenants have not proved where their registered mail was sent or that it was sent to an address at which the landlord resides or carries on business as a landlord.

I find that it would be procedurally unfair to continue with the tenants' application for dispute resolution because the landlord has not been properly notified of this hearing

and has not had a fair opportunity to respond. The tenants' application for dispute resolution is therefore dismissed with leave to reapply.

I notified the tenants that if they wished to pursue this matter further, they would have to file a new application. I cautioned the tenants to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

I find that since the tenants' application was dismissed, the tenants are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I dismiss the tenants' application to recover the \$100.00 filing fee without leave to reapply.

The remainder of the tenants' 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: June 05, 2023

Residential Tenancy Branch