



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenants applied for the return of double their security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The female Tenant stated that she personally went to the Landlord's residence and served copies of the Application for Dispute Resolution and Notice of Hearing to the Landlord's mother, who advised that her son was not at home at the time of service.

The Landlord did not appear at the hearing.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution to a Landlord is to notify them that a dispute resolution proceeding has been initiated and to give the Landlord the opportunity to respond to the claims being made by the Tenants. When a party files an Application for Dispute Resolution in which the party has applied for a monetary Order, that party has the burden of proving that the other party was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) stipulates, in part, that a tenant must serve a landlord with an application for dispute resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (b) by leaving a copy with an agent for the landlord
- (c) by sending a copy by registered mail to his residential or business address;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

There is no evidence that the Landlord was personally served with the Application for Dispute Resolution, therefore I find that he was not served in accordance with section 89(1)(a) of the *Act*.

There is no evidence that the Landlord's mother has acted as an agent for the Landlord during this tenancy and I therefore find that he was not served in accordance with section 89(1)(b) of the *Act*.

There is no evidence that the Application for Dispute Resolution was mailed to the Landlord and I cannot, therefore, conclude that he was served in accordance with section 89(1)(c) of the *Act*.

There is no evidence that the director authorized the Tenants to serve the Application for Dispute Resolution in an alternate manner, therefore I find that the Landlord was not served in accordance with section 89(1)(e) of the *Act*.

The Tenants submitted no evidence to cause me to conclude that the Landlord received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

Conclusion

Having found that the Tenants failed to prove service of the Application for Dispute Resolution, I hereby dismiss the Tenants' Application for Dispute Resolution, with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution and to serve the Application for Dispute Resolution in accordance with section 89 of the *Act*.

The Tenants have the right to retrieve any original evidence, such as the letter they mailed to the Landlord on March 30, 2010, that was submitted to the Residential Tenancy Branch in support of this Application for Dispute Resolution in the event they wish to rely on this original evidence at future proceedings.

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: September 01, 2010.

Dispute Resolution Officer