



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD & O

Introduction

This hearing was to deal the landlord's request to retain the tenant's security and pet deposits. The tenant did not appear. The landlord appeared and gave affirmed oral testimony. Even though the landlord had the opportunity to provide documentary evidence before the hearing, no evidence was provided.

Service of Documents

The landlord testified that the tenant was served with notice of this application and hearing by registered mail. The landlord did not provide a copy of the registered mail receipt.

The landlord testified that the documents were sent to an address which the tenant provided at the start of the tenancy. The landlord provided no evidence that the tenant currently resides at this address.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to establish that the tenant was served with notice of this application and hearing in accordance with section 89 of the *Act*?

Analysis

Section 89 of the *Act* requires that an application for a monetary claim be served upon the other party either in person or by registered mail. If documents are served to a tenant by registered mail, the mail must be sent to an address where the tenant currently resides.

Policy guideline 12 states:

Proof of service by registered mail should include the original receipt given by the post office and should include the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service.

Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply.



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In the application before me the landlord has failed to provide any evidence to substantiate that the tenant was served with notice of this application at an address whether the tenant currently resides. The landlord stated that the registered mail was not returned and that I should infer that the tenant has been served. However, in the absence of a copy of the registered mail receipt and confirmation through the tracking system provided by Canada Post, it is not sufficient to accept only the landlord's oral testimony that the documents were successfully delivered.

Conclusion

I find that the landlord has failed to provide sufficient evidence to determine that the tenant was served with notice of this application and hearing in accordance with section 89 of the *Act* and I dismiss the landlord's application with leave to re-apply.

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: January 12, 2011.

Residential Tenancy Branch