



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for reimbursement of the security deposit, doubled, and to recover the cost of the filing fee from the Landlord for this application.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord did not appear at the hearing.

The Tenant testified and supplied evidence that service of the Notice of Dispute Resolution and Hearing package was delivered to the Landlord via a delivery company. The Tenant further testified that the hearing package was delivered, which was confirmed via her online search; however the results of that search were not submitted into evidence.

Analysis

Section 89 of the Residential Tenancy Act describes ways in which documents must be delivered, including 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. The Act defines registered mail as including any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

The evidence and testimony supports that the Hearing Package was delivered not by Canada Post, but rather by a delivery company. The evidence also does not indicate to whom or where the Hearing Package was delivered.

I therefore find that service of the Notice of Dispute Resolution was not in accordance with Section 89 of the *Act*.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I **dismiss** the Tenant's claim, **with leave to reapply**.

As the Tenant has not been successful with her application, I find that she is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

I DISMISS the Tenant's claim, 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 21, 2011.

Residential Tenancy Branch