



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee.

The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by placing the documents through the mail slot in the front door of the apartment building.

I found that the landlord had not been properly served with notice of the tenant's claim and the date and time of the hearing therefore the hearing did not proceed.

Background and Evidence

The tenant stated that due to the Canada Post mail strike she had delivered the hearing documents by placing them through the mail slot at the front door of the apartment building. The tenant stated that this was the secured front door to the building which is accessed by all tenants who reside in the building. The tenant stated that as she could not gain access to the building she could not leave the documents at the landlord's door.

The tenant also stated that she could not mail the hearing documents to the landlord as this is a rural area and she was never provided with the landlord's post office box number and mail is not delivered directly to the apartment building. The tenant stated that she was not aware of the process for applying for substituted service of documents.

Law

Residential Tenancy Policy Guideline **12 Service Provisions** speaks to:

6. Serving Documents At The Address At Which The Landlord Carries On Business As A Landlord

*The Legislation permits a tenant to serve a document on a landlord at the address at which the landlord carries on business as a landlord, in one of the following ways:*⁷

- *by mail,*
- *by leaving a copy of the document in a mailbox or mail slot,*
- *by attaching a copy of the document to a door or other conspicuous place.*

4. Service Of Documents Generally

The Legislation provides a number of service methods which may be used where a landlord or tenant is serving documents which are not covered by the sections referred to above. These methods are:

- ***by leaving a copy of the document in a mailbox or mail slot for the address where the person to be served carries on business as a landlord.***

If this method of service is used, the person leaving the document needs to determine that the mailbox or mail slot belongs to the address at which the landlord carries on business as a landlord, particularly in a multi-unit building, such as an apartment, condo, or office building.

If the landlord disputes that he or she has been served in one of the permitted ways at the address where he or she carries on business as a landlord, or if the landlord does not attend at the hearing, the tenant will have to provide sufficient evidence to the arbitrator to prove that the address used is in fact the address at which the landlord carries on business as a landlord.

11. Orders For Substitutional Service¹⁰

An application for substituted service may be made at the time of filing the application or at a time after filing. The party applying for substituted service must be able to demonstrate two things:

- *that the party to be served cannot be served by any of the methods permitted under the Legislation, and*
- *that the substituted service is likely to result in the party being served having actual knowledge of what is being served*

13. Parties Not Served

Where one or more parties on an application for arbitration has not been served, the arbitrator's Order will indicate this and will dismiss, or dismiss with leave to reapply, the application involving the party not served.

Analysis

Based on the facts before me I am not satisfied that the landlord was properly served with the application for dispute resolution and notice of hearing when the tenant placed the documents through the mail slot of the main door to the apartment building.

While the mail slot used for delivery is located at a building address the landlord conducts business from, the mail slot used was not specific to the landlord and anyone entering the building had the opportunity to take possession of the documents.

I am not satisfied that the tenant has provided sufficient evidence that the documents were served in accordance with the *Act* therefore the tenant's application is dismissed.

As the tenant has not been successful in their application the tenant is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is hereby 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: September 1, 2011

Residential Tenancy Branch