



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord filed her application on **July 5, 2011**. The Landlord's agent said he made several unsuccessful attempts to serve the Tenants in person with the Application and Notice of Hearing (the "hearing package") at a forwarding address they provided on their move out condition inspection report. Consequently the Landlord's agent said on **August 3, 2011**, he served the Tenants with the Landlord's hearing package by registered mail. The Canada Post online tracking system, however does not show this to be a registered mail item and only states that this mail was "delivered." The Landlord's agent claimed that he had a copy of the Tenants' signatures confirming that they had received the hearing packages and he undertook to provide a copy of that following the hearing. The document provided by the Landlord's agent following the hearing, however, was a carbon copy of the mailing label indicating that it was "Xpresspost" (not registered mail) and no signature could be seen on it verifying delivery.

Section 59(3) of the Act says that "a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director." I find that the Landlord did not serve the hearing packages on the Respondents within 3 days of filing her application and did not have an Order of the director permitting her to serve the hearing packages at a later time.

Section 89(1) of the Act says that an application for a monetary order must be served on the other party either in person or by *registered mail*. The reason for requiring delivery to be by registered mail rather than another form of mail is because the name and signature of the recipient is recorded electronically and identification is required to confirm the identity of the recipient. With Xpresspost, on the other hand, there is not always a record of the recipient and no identification is required to confirm the identity of the recipient. Furthermore, with Xpresspost, documents need not be delivered to a recipient but may simply be left at the delivery address.

Conclusion

For all of the above reasons, I find that the Landlord has not complied with s. 59(3) and s. 89(1) of the Act regarding service of the Application for Dispute Resolution on the Respondents and as a result, her application for compensation for damages to the rental unit and to keep the Tenants' security deposit is dismissed with leave to reapply. (Although it appears the Landlord may not have complied with the 15 day rule under s. 38(1) of the Act for making a claim against the security deposit). The Landlord's application to recover the filing fee for this proceeding is dismissed without 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: October 03, 2011.

Residential Tenancy Branch