



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows.

1. A Monetary Order for damage and loss –Section 67

The tenant attended the conference call hearing. The landlord did not. The tenant testified that they served the Notice of Hearing by registered mail to the vacated dispute address, now occupied by new tenants, and that they also served their evidence upon one of the new tenants.

Section 89 of the Act states as follows (**all emphasis for ease**)

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy **with the person**;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) 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;
- (d) if the person is a tenant, by sending a copy by registered mail **to a forwarding address provided by the tenant**;

(e) **as ordered by the director** under section 71 (1)
[director's orders: delivery and service of documents].

Section 89 of the Act is deliberately designed to give credibility to the presumption of service if a party is served in accordance with the ways listed. I find the tenant's method of serving the landlord is not within the provisions established in the Act. As a result, I am not satisfied the landlord was served with notice of this hearing pursuant to Section 89 of the Residential Tenancy Act.

Therefore, **I dismiss** the tenant's application, but I do so with leave to reapply. None of the potential merits of this application were heard.

Conclusion

The tenant's application **is 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: December 07, 2011

Residential Tenancy Branch