



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:15 p.m. in order to enable her to connect with this hearing scheduled for 1:00 p.m. One of the landlords attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Issues(s) to be Decided

Have the landlords demonstrated that the tenant was served with notice of the landlords' application for dispute resolution? If so, are the landlords entitled to a monetary award for unpaid rent? If so, are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence – Service of Documents

The landlord who attended this hearing (the landlord) testified that the landlords received the tenant's notice to end this tenancy on October 15, 2011 by way of the tenant's September 20, 2011 email, a copy of which the landlord entered into written evidence.

The landlord testified that he sent a copy of the dispute resolution hearing package to the tenant by registered mail. He provided three different estimates of when he sent this registered mail (i.e., November 20, 2011; a week after filing the landlords' November 29, 2011 application for dispute resolution; and about December 20, 2011). The landlord was unable to provide the Canada Post Tracking Number to confirm this mailing but testified that the tenant did sign for receipt of the hearing package document. Since the circumstances of the landlords' service of the dispute resolution hearing package were unclear, I asked if the landlord could forward these details to the

Residential Tenancy Branch for my consideration by fax later that day. He said that he would be unable to retrieve and fax this information to me that day.

Analysis – Service of Documents

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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 document]...*

Based on the oral testimony of the landlord and the landlord's failure to provide consistent and verifiable evidence to demonstrate how the tenant was notified of this hearing, I am not satisfied that the landlords have proven that the dispute resolution hearing package has been served to the tenant in accordance with the *Act*. I dismiss the landlords' application with leave to reapply.

As I am not satisfied that the landlords have demonstrated that the tenant was served notice of this application, I similarly dismiss the remainder of the landlords' application with leave to reapply.

Conclusion

I dismiss the landlord's application 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: February 10, 2012

Residential Tenancy Branch