



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNR, , FF

Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*. The landlord was in attendance. The tenant did not appear.

Preliminary Issue

The landlord testified that although the tenant had never provided a forwarding address in writing, on November 29, 2011 the landlord served the hearing package by registered mail to the address that the landlord had apparently obtained from a tracer that they had employed. The respondent address indicated on the application was a Post Office Box. The landlord testified that the tenant was apparently contacted successfully by mail at this address after the tenancy ended. In evidence, there was a copy of a letter to the tenant, care of another individual with the same name followed by the initials, "Sr.". The landlord testified that Canada Post tracking data confirmed that the hearing package was retrieved by a person at the delivery address shown on the application and the letter.

Based on the testimony given by the landlord, and the other evidence, I find that there is no way to determine for certain that the tenant resided at the address given on the latter, in care of the other individual. Moreover, if the hearing package was served to a post office box, this would not have been served in compliance with Section 89 of the Act which states that an application for dispute resolution, when required to be served by the landlord to the tenant, must either be given directly to the person or sent by registered mail to the address at which the person resides or to a written forwarding address provided by the tenant. (my emphasis).

In this instance, the Notice of Hearing was sent by registered mail to a post office box and may have been retrieved by a person other than the tenant himself.

The burden is on the applicant to prove that the service was within the above provisions. As the landlord served the documents to an address that was not confirmed

to be that of the tenant's current residence, I find that this would not meet the definition of service by registered mail to the "*address at which the person resides*" and is therefore not valid service under the Act.

Given the above, I find that the matter under dispute cannot proceed because the landlord has not proven that the tenant was properly served and I therefore have no choice under the Act but to dismiss this application with leave to reapply.

Conclusion

Based on evidence and testimony, I hereby dismiss this 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 13, 2012.

Residential Tenancy Branch