



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy, to recover rent paid, and to recover the cost of filing this Application for Dispute Resolution.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a landlord is to notify the landlord that a dispute resolution proceeding has been initiated and to give the landlord the opportunity to respond to the claims being made by the tenant. When a tenant files an Application for Dispute Resolution in which the tenant has applied for a monetary Order, the tenant has the burden of proving that the landlord was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (b) by leaving a copy with an agent for the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or carries on business as a landlord;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Tenant submitted no evidence to show that the Landlord was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that he was served in accordance with section 89(1)(a) of the *Act*.

The Tenant submitted no evidence to show that the Application for Dispute Resolution or Notice of Hearing was served to an agent for the Landlord and I therefore cannot conclude that he was served in accordance with section 89(1)(b) of the *Act*.

The Tenant stated that she sent the Application for Dispute Resolution to the Landlord via regular mail. The Tenant submitted no evidence that the Application for Dispute Resolution was sent to the Landlord by registered mail and I cannot, therefore, conclude that he was served in accordance with section 89(1)(c) of the *Act*.

The Tenant stated that she sent the Landlord a package of evidence, via registered mail, in September of 2012. As the Application for Dispute Resolution was not included in this mailing, it does not affect my decision in regards to service of the Application.

There is no evidence that the director authorized the Tenant to serve the Application for Dispute Resolution to the Landlord in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) of the *Act*.

The Tenant submitted no evidence to cause me to conclude that the Landlord received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As there is no evidence that the Landlord has been served with proper notice of this hearing, I find it inappropriate to proceed with this matter in the absence of the Landlord.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed with leave to reapply. The Tenant retains the right to file another Application for Dispute Resolution regarding these matters.

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 24, 2012.

Residential Tenancy Branch