



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

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 or loss - Section 67;
2. An Order to recover the filing fee for this application - Section 72.

The tenant attended the conference call hearing - the landlord did not. The tenant testified that they sent the landlord the Notice of Hearing package by mail to the vacated rental unit – purportedly now occupied by a new tenant. The tenant did not employ any other means to serve the landlord. The tenant testified they did not remember what type of mail service they utilized to serve the landlord, or how much it cost for the service other than it was a “couple of bucks”; and, that they discarded any receipt they may have been given respecting the mail out. The tenant used the term *registered mail* only after being prompted of this method.

Section 89 of the Act states, in relevant part, as follows – **emphasis mine**

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 testimony is that at best they sent the landlord the Notice of Hearing by regular mail to the old dispute address. 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, and may not know of this proceeding.

Therefore, **I dismiss** the tenant's application, but I do so, **with leave to reapply**.

None of the merits of this application were heard.

Conclusion

The tenant's application **is dismissed, with leave to reapply**.

This Decision is final and binding on both parties.

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: June 04, 2013