



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 9:44 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. Both landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlords maintained that the tenant has left them no forwarding address. The landlords entered sworn testimony and written evidence that they served the tenant with their application for dispute resolution (including the notice of hearing) and their written evidence by handing these documents to the tenant's employer on March 11, 2013 and March 19, 2013. They also entered into written evidence a statement from the tenant's employer confirming that he would hand these documents to the tenant.

Preliminary Issue - Service of Documents

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

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 documents].*

At the hearing, I advised the landlords of my finding that they have not served the tenant in a manner required by section 89(1) of the *Act*. For this reason, I cannot consider the landlords' application for a monetary Order. I dismiss the landlords' application for a monetary Order with leave to reapply.

At the hearing, I noted that the landlords are at liberty to apply for a substituted service order pursuant to the following provisions of section 71 of the *Act*:

71 (1) *The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.*

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Should the landlords apply for a substituted service order, they would need to demonstrate to an Arbitrator appointed under the *Act* that they are unable to serve the tenant with an application for a monetary Order in a way set out in sections 89(1)(a) to (d) of the *Act*.

Conclusion

The landlords' application for a monetary Order 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: June 03, 2013

Residential Tenancy Branch

