



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled to deal with a tenant's application for return of the portion of the security deposit not returned by the landlord. The landlord did not appear at the hearing. The tenant provided a registered mail receipt and a copy of the returned envelope as proof of service of the hearing documents via registered mail on August 16, 2013. The registered mail was sent to the landlord using the rental unit address and was returned as "unclaimed".

Preliminary Matter – Service of hearing documents

A party that files an Application for Dispute Resolution must serve the respondent with the Application for Dispute Resolution in a manner that complies with section 89 of the Act. Where a tenant chooses registered mail as the method of service, the tenant must serve their landlord using the landlord's address of residence or the address at which the landlord carries on business as a landlord, at the time of mailing. As provided in Residential Tenancy Police Guideline 12: *Service Requirements*, where a respondent does not appear at the hearing, the burden to prove service is upon the applicant. As such, the applicant must be prepared to prove, among other things, that the address used for service was the respondent's residence at the time of mailing, or the landlord's place of conducting business as a landlord at the time of mailing.

The tenant explained that she was told verbally by the landlord's realtor that the landlord would be moving in to the rental unit and that the landlord wanted the tenants to vacate the rental unit by the end of August 2011. The tenant stated that she did not receive a Notice to End Tenancy from the landlord or any other documentation from the landlord that would indicate a service address for the landlord. The tenants found a new place to live and moved out of the rental unit August 15, 2011. The tenant acknowledged that she did not do anything to confirm that the landlord had actually moved into the rental unit but pointed to a letter she received from the landlord in October 2011 where the

landlord wrote the rental unit address as the landlord's return address on the envelope containing the letter.

The tenant also stated the rental unit had been sold three times during the tenancy (which was for the period of February 2011 – August 2011) and that the tenant had not otherwise attempted to verify that the landlord was still living at the rental unit at the time of filing this Application for Dispute Resolution.

Considering the subject property had been sold multiple times in a short amount of time; the tenant's Application was filed approximately 1 year and 9 months since receiving the landlord's last correspondence; and, the tenant took no action to confirm the landlord was still residing at the rental unit at the time of filing or mailing her Application for Dispute Resolution, I find the tenant did not satisfy me that the address used to mail the hearing documents was the landlord's residence or address for doing business as a landlord at the time of mailing. Therefore, I find the tenant failed to meet her burden with respect to service of the hearing documents upon the landlord.

Where service of an Application for Dispute Resolution is insufficient the Application for Dispute Resolution is usually dismissed with leave to reapply. However, in this case, the time for filing an Application for Dispute Resolution against the landlord has now surpassed the two year statutory time limit for filing; therefore, I dismiss this Application without leave.

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: November 21, 2013

Residential Tenancy Branch

