



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was held to deal with an Application by the tenant for a monetary order against the landlord for failing to return the tenant's security deposit within 15 days after the end of the tenancy and the provision of a written forwarding address.

The tenant was in attendance. The landlord did not appear.

Preliminary Issue

The burden is on the applicant to prove that the service was in accordance with the Act.

At the outset of the hearing, the tenant advised that the Notice of Dispute Resolution Hearing documents were served to the only address he had for the landlord. However, the registered mail was returned by Canada Post marked, "*moved*". The tenant testified that he has the landlord's phone number, but has not been able to find out the new residential or business address for the landlord.

Section 89(1) of the Act provides that an application for dispute resolution 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*].

(My emphasis)

In this instance, I find that the tenant did attempt to properly serve the landlord by registered mail sent to the address where the respondent resides, in accordance with the Act. However, given that Canada Post confirmed that the landlord had moved and was no longer residing at the address used by the tenant, I find that the tenant did not, in fact, mail the hearing documents to the address where the landlord resides at present.

Based on the evidence, I find that the matter under dispute cannot proceed because the landlord was not served. I find that I must dismiss this application with leave to reapply at a later date, should the tenant wish to proceed with the claim for a refund of double the security deposit.

Based on evidence and testimony, I hereby dismiss this application with leave to reapply.

Conclusion

The tenant's application has not been heard on its merits, due to the respondent not being served in compliance with the Act, and 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: December 17, 2013

Residential Tenancy Branch

