



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:47 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Service of Application for Dispute Resolution

The landlord testified that the landlord obtained the tenant's mailing address from the tenant's sister on December 12, 2013. The landlord said that one of her colleagues sent a copy of the landlord's dispute resolution hearing package to the tenant by registered mail. The landlord entered into written evidence an undated copy of the Canada Post Tracking Number to confirm this registered mailing.

Analysis – Service of Application for Dispute Resolution

Section 89 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;...*

In this case, the landlord reversed the tenant's first and last names in the application for dispute resolution, resulting in the Residential Tenancy Branch's issuance of a Notice of Dispute Resolution Hearing to the reversed name shown on the landlord's application for dispute resolution. I advised the landlord that it might be difficult for the tenant or his agent to sign for receipt of this registered mail if his identification did not match with the name shown on the registered mail. However, I noted that I might be able to correct this deficiency if I were otherwise satisfied that the registered mail hearing package were sent to the correct person as maintained by the landlord.

Although the landlord provided a copy of the Canada Post Customer Receipt including the Tracking Number, she did not know when this hearing package was sent by registered mail to the tenant. The landlord only provided the front of this Receipt which showed only the tenant's last name and the Tracking Number. Both the landlord and I were unable to find any record of this Tracking Number in the Canada Post Online Tracking System. For this reason, it could not be determined if the hearing package was sent to the correctly named tenant or whether it had been received by the tenant.

I find that the level of uncertainty surrounding the service of the landlord's dispute resolution hearing package prevents me from concluding that the landlord has served this package in accordance with section 89(1) of the *Act*. I find that the landlord has failed to demonstrate that the correctly named and identified tenant was properly served with the landlord's application for dispute resolution.

Conclusion

I dismiss the landlord's application 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: April 10, 2014

