



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlords and for the return of the filing fee for the Application.

Only one of the Tenants appeared at the hearing. The Tenant provided affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified she served the Landlords with the Notice of Hearing and the Application for Dispute Resolution, by dropping it off at the address of the Landlords. The Tenant said she had a friend, who was not present at the hearing, leave it in the mailbox and she took a picture of this. No copy of the picture was provided in evidence.

The Tenant testified she did not want to send the Application and Notice of Hearing by registered mail, as she did not think the Landlords would pick the mail up.

Analysis

I find the Application of the Tenants must be dismissed, as they have failed to prove they served the Landlords in accordance with the Act, although they may file a new Application.

When an applicant receives a hearing package from the Branch, part of the package includes written instructions on how to serve the other party with their documents. It appears the Tenants failed to follow these instructions.

Section 89 explains how the Tenants must serve the Landlords:

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;

...

[Emphasis added.]

For the purposes of clarity, I note that 89(1)(a) above refers to leaving it with a “person”, not a mailbox.

As to the Tenant assuming the Landlords would not pick up registered mail, the Act also provides, in section 90, that registered mail is deemed served on the fifth day after it is mailed. In other words, even if the Landlords refuse or neglect to accept the registered mail they are still deemed served under section 90.

As the Tenants have failed to provide sufficient evidence they served the Landlords in accordance with the Act, I dismiss their Application with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 10, 2014

Residential Tenancy Branch

