



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on June 19, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; the return of their security and or pet deposit; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Tenant E.M.

Issue(s) to be Decided

- 1) Have the Tenants proven that the Landlord was served Notice of this proceeding?
- 2) If not, should the application be dismissed with or without leave to reapply?

Background and Evidence

At the outset of this proceeding the Tenant stated that she served the Landlord with copies of her Application for Dispute Resolution and Notice of this proceeding by registered mail. The Tenant initially stated she did not have the tracking number information as she had moved. Then the Tenant stated that the registered mail package was sent to the Landlord on June 21, 2014 and the Tenant provided a Canada Post tracking number that matched the tracking number on the Canada Post receipts provided in her evidence which was dated June 2, 2014.

Analysis

Section 89(1) of the Act stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, must be served upon the other party.

In the absence of the respondent Landlord, the burden of proof of service of the hearing documents lies with the applicant Tenants. The Tenant initially testified that she did not have the required information as she had recently moved. Then she stated that they served the documents by registered mail on June 20, 2014; however, the Canada Post tracking information and cash registered receipt provided in the Tenant's evidence and in her oral testimony pertained to a registered mail package that had been sent June 2, 2014, eighteen days prior to the Tenants filing their application. Therefore, I find there to be insufficient evidence to prove the Landlord was sufficiently served notice of this proceeding.

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As there is insufficient evidence to prove the service of documents have been effected in accordance with section 89 of the *Act*, I dismiss the Tenants' application, with leave to reapply.

Conclusion

I HEREBY DISMISS the Tenants' application, with leave to reapply. This dismissal does not extend any time limits set forth in the *Residential Tenancy Act*.

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: October 23, 2014

Residential Tenancy Branch

