



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 the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 14 minutes. The tenants' agent ("tenant") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed that she had authority to speak on the tenants' behalf as an agent at this hearing, as the tenants are her parents. The tenant SK was present at the hearing but did not provide any testimony.

Preliminary Issue – Service of Tenants' Application

The tenant testified that the landlord was served with the tenants' application for dispute resolution hearing package ("Application") on January 9, 2015, by way of mail. The tenant testified that she could not locate the receipt to confirm this mailing. The tenant indicated that when she spoke with Canada Post about this mailing, they confirmed that there was no tracking number or signature required upon delivery. The tenant stated that she had no way to track the mailed package. The tenant indicated that the landlord usually travels out of the country and that she had no other address for service for him.

Analysis – Service of Tenants' Application

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows:

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;

...

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states the following with respect to proof of service by registered mail:

Where a tenant is serving a landlord by registered mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord...

...

Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

...

Proof of service by registered mail should include the original receipt given by the post office and should include the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service.

The tenants have failed to sufficiently demonstrate that the landlord was served in accordance with section 89(1) of the *Act*. The tenants are unsure as to whether the landlord still resides or carries on business at the address at which they sent their Application. The tenants were unable to provide a receipt or a tracking number to confirm their service. The tenants' Application was not sent by way of mail for which a confirmation of delivery to a named person, could be made.

During the hearing, I advised the tenant that the landlord was not served with the tenants' Application by way of registered mail, in accordance with section 89(1) of the *Act*. I further advised the tenant that if the tenants are unable to serve the landlord in accordance with sections 89(1)(a) to (c) of the *Act*, the tenants can apply for an order to serve the landlord by way of substituted service under section 71(1) of the *Act*.

During the hearing, I also advised the tenant that I was dismissing the tenants' Application with leave to reapply.

Conclusion

The tenants' Application 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: April 30, 2015

Residential Tenancy Branch

