



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, O, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, for “other”, and to recover the filing fee from the Landlord for the cost of filing this application.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit; compensation for renovating a bathroom; and to recover a loan?

Background and Evidence

The Tenant stated that on October 18, 2014 he sent the Application for Dispute Resolution and Notice of Hearing to the Landlord, via a private courier service. He stated that the Landlord refused to accept the documents and they were returned to the Tenant.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing is to notify the other party that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims. When a tenant files an Application for Dispute Resolution for a monetary Order, the tenant has the burden of proving that the landlord was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (b) 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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As there is no evidence the Landlord was personally served with the Application for Dispute Resolution and the Notice of Hearing, I cannot conclude these documents were served pursuant to section 89(1)(a) of the *Act*.

As there is no evidence the Application for Dispute Resolution and the Notice of Hearing were served to an agent for the Landlord, I cannot conclude these documents were served pursuant to section 89(1)(b) of the *Act*.

As there is no evidence the Application for Dispute Resolution and the Notice of Hearing were mailed to the Landlord, via Canada Post, I cannot conclude these documents were served pursuant to section 89(1)(c) of the *Act*.

As there is no evidence that the director authorized the Tenant to serve the Application for Dispute Resolution via a private courier service, I cannot conclude these documents were served pursuant to section 89(1)(d) of the *Act*.

On the basis of the testimony of the Tenant I accept that the Application for Dispute Resolution were sent to the Landlord, via a private courier service, and that the documents were not received by the Landlord. I am therefore unable to conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

I note that a party cannot avoid service of documents by refusing to accept documents that are personally served to them or that are served via registered mail. In these circumstances, I am unable to conclude that the Landlord has been sufficiently served when he allegedly refused to accept documents that were sent by private courier. This conclusion is based, in large part, on the absence of evidence from the courier that establishes how delivery was attempted/refused and, in part, because I am not familiar with the delivery practices of this courier service.

As the Tenant has failed to establish that the Landlord was served with the Application for Dispute Resolution in accordance with section 89 of the *Act*, I am unable to proceed with the Application in the absence of the Landlord.

Conclusion

The Application for the Dispute Resolution is dismissed with leave to reapply. The Tenant has the right to file another Application for Dispute Resolution.

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: May 16, 2015

Residential Tenancy Branch

