



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 MNDC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:19 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:00 p.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.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damages and losses arising out of this tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Preliminary Issue – Service of Application for Dispute Resolution

The landlord testified that the landlord served the tenant with the dispute resolution hearing package including a copy of the application for dispute resolution package by sending it to the tenant by registered mail on October 27, 2014. She testified that this package was mailed to the tenant at the address of the rental unit. She provided two Canada Post Tracking Numbers to confirm this registered mailing. She said that she was uncertain as to whether the package had been successfully delivered to the tenant. The landlord testified that the tenant vacated the rental unit and yielded vacant possession of the rental unit on October 31, 2014.

Analysis – Service of Tenant's Application

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution seeking 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;*
- (e) *as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlord testified that the tenant was still residing at the rental unit when the landlord sent him the dispute resolution hearing package including notice of this hearing. Section 90 of the *Act* establishes that deemed service of that package did not occur until the fifth day after its registered mailing. In this case, deemed service of the hearing package did not occur until November 1, 2014, after the tenant was no longer residing in the rental unit.

I attempted to check on-line using the tracking numbers provided by the landlord to determine if the hearing package had actually been successfully delivered to the tenant. Paragraph 71(2)(c) of the *Act* allows an arbitrator to find that a hearing package containing notice of a hearing and a landlord's application had been sufficiently served to the tenant for the purposes of this *Act*. I was unable to confirm this information through Canada Post's Online Tracking System and the landlord could not confirm whether or when this package had been signed for and received by the tenant.

Under these circumstances, I find that the landlord has not served the application for dispute resolution or the dispute resolution hearing documents as required by section 89(1) of the *Act* because the tenant was no longer residing at the address where the landlord sent the hearing package when that package was considered deemed served. Although I have carefully considered whether to invoke the discretion allowed to me pursuant to paragraph 71(2)(c) of the *Act*, I find that I have insufficient grounds to do so. As I am not satisfied that the landlord has properly served the tenant with the application for dispute resolution, I dismiss the landlord's application with leave to reapply.

Conclusion

The landlord's 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: June 18, 2015

