



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1348 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord CR (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord confirmed that he had authority to act on behalf of his co-landlord MB.

Preliminary Issue – Service of Dispute Resolution Package

This tenancy ended on or about 23 October 2014, by order of the Residential Tenancy Branch.

The landlord testified that the landlords served the tenants with the dispute resolution package on 31 October 2014 by registered mail and on 30 October 2014 by delivering the package to an occupant of the residence listed for service (the Service Address).

The landlord testified that the tenant's co-tenant AJ provided the Service Address as the tenant's forwarding address to the landlords. The landlord testified that the co-tenant was the tenant's girlfriend. The landlord testified that the Service Address was a

halfway house. The landlord testified that the co-tenant was not living at the Service Address as the co-tenant's relationship with the tenant had ended.

The landlord provided me with a Canada Post customer tracking number. The tracking information indicated that the package was undeliverable as the tenant was not locatable at the Service Address. The landlord testified that on 30 October 2014, he was accompanied by the police to the Service Address. The landlord testified that he left the dispute resolution package at the Service Address with an occupant of that address.

Service of the dispute resolution package must be carried out in accordance with section 89 of the Act:

- (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;...

Service to the occupant of the Service Address is not an acceptable form of service pursuant to paragraph 89(1)(a) of the Act: the only person the dispute resolution package may be left with is the tenant.

Service by registered mail is contemplated by both paragraphs 89(1)(c) and 89(1)(d) of the Act. The Service Address was not provided by the tenant as his forwarding address; rather, the address was received from the co-tenant. The landlord testified that he believed that the Service Address was a halfway house and that the tenant resided at that address; however, the Canada Post mailing was undeliverable as "the recipient [was] not located at address provided". Based on this evidence, I am not satisfied that the tenant was served at the place at which he resides or at the forwarding address provided by the tenant.

On the basis of this evidence, I find that the landlords have not proven service pursuant to subsection 89(1) of the Act. As such, the landlords' application is dismissed with leave to reapply.

As mentioned at the hearing the landlords may find the following sections of the Act helpful:

- section 39;
- section 60; and
- section 71.

Conclusion

The landlords' application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 02, 2015

Residential Tenancy Branch

