



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APARTMENT HOTEL ENIGMA INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was scheduled to address the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of his security deposit pursuant to section 38. The landlord did not attend this hearing, although the teleconference scheduled for 9:00 a.m. continued until 9:15 a.m., enabling the landlord to have an opportunity to connect to this teleconference. The tenant attended the hearing and was given a full opportunity to be heard, to present testimony, and to make submissions with respect to his application.

Preliminary Issue: Service of Documents

At the outset of the hearing, the tenant was unable to provide information regarding the details of service of his Application for Dispute Resolution ("ADR") including the Notice of Hearing. The tenant initially testified that he had a Canada Post receipt dated June, 2015. The tenant then testified that he believed, without certainty that he had mailed his ADR on January 16, 2014. The tenant testified that he paid for regular mail service of the ADR to the landlord. The tenant was asked if he was able to provide any Canada Post receipt and/or tracking number with respect to the mailing of his ADR. The tenant was unable to do so. The tenant testified that he had some receipts but, based on the information provided by the tenant in his testimony, those receipts did not reflect registered mail service. The tenant was confused and noted that this tenancy matter dated back to November 2014.

Rule 3.1 of the Dispute Resolution Rules of Procedure states that an applicant in a dispute resolution matter must serve the respondent with; the application for dispute resolution; the notice of dispute resolution proceeding letter ("the notice of hearing"); the dispute resolution proceeding information package; any evidence relating to a monetary claim or end of tenancy; as well as any other evidence to be relied on at the dispute resolution hearing. Rule 3.5 states that "[at] the hearing, the applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that each respondent was served with the hearing package and all evidence, as required by the *Act*." With respect to this application, I find the applicant was unable to demonstrate to my satisfaction that the

respondent had been sufficiently served with the materials for this hearing in accordance with the *Act*.

Section 89 of the *Act* is the relevant provision with respect to the service of the ADR.

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 documents*].

Residential Tenancy Policy Guideline No. 12 provides further detail of the requirements under section 89 of the *Act*.

All parties named on an application for Dispute Resolution must receive notice of proceedings. ... Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. ...

Policy Guideline No. 12 also provides that there are only three methods of service for serving an Application for Dispute Resolution. *These are:*

- i. *Personal Service ...*
- ii. *Registered Mail*
 - o ***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.***
- iii. *A Residential Tenancy Branch Order Regarding Service*
(emphasis added)

When a respondent does not attend a Dispute Resolution Hearing, the applicant must be prepared to prove service of the Application for Dispute Resolution and the attending documents by providing the date and time of service and any other relevant details of

that service. Service by mail requires a receipt as proof. The tenant/applicant did not provide any documentation to show that he sufficiently served the landlord/respondent by registered mail. The tenant did not meet the provisions of the *Act* with respect to service that were provided to him when he filed his application. The Notice of Dispute Resolution supplied to the tenant on application state, "Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical."

I find that the tenant has not proven service of his Application for Dispute Resolution. Therefore, pursuant to the Legislation, I dismiss the tenant's application with leave to re-apply.

Conclusion

I dismiss the tenant's application with leave to re-apply.

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: July 31, 2015

Residential Tenancy Branch