



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on January 26, to obtain a Monetary Order to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one appeared on behalf of the respondent Tenant.

Issue(s) to be Decided

Has the Landlord proven the Tenant has been sufficiently served notice of this proceeding?

Background and Evidence

At the outset of this proceeding the Landlord stated that the Tenant was served with a copy of the application for Dispute Resolution and notice of this proceeding by registered mail. The Landlord was not able to provide evidence of the date the registered mail was sent or the Canada Post tracking information.

Analysis

Section 89(1) of the Act stipulates that 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;
- (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*].

In the absence of the respondent Tenant, the burden of proof of service of the hearing documents lies with the applicant Landlord. The Landlord testified that she served the application and hearing documents via registered mail; however, the Landlord was not able to provide evidence of the date the package was sent or the tracking information. Therefore, in absence of the Tenant I find there was insufficient evidence to prove the Tenant was served with Notice of this proceeding, in accordance with the Act.

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. Therefore, in absence of evidence to prove service of the application and hearing documents, I dismiss the Landlord's claim, with leave to reapply.

Conclusion

The Landlord was not able to prove service of her application and hearing documents. As a result her application was dismissed, with leave to reapply. This dismissal does not extend any time limits set forth in the *Residential Tenancy Act*.

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: August 12, 2015

Residential Tenancy Branch

