



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The tenant applies to recover a security deposit, doubled pursuant to s.38 of the *Residential Tenancy Act* (the “Act”).

The landlord did not attend the hearing.

Issue(s) to be Decided

Has the landlord been duly served with the application and notice of hearing?

Background and Evidence

According to the tenant, the rental unit is a three bedroom condominium apartment. The tenancy started in September 2014 for a three month fixed term at a total rent of \$28,000.00. The tenant paid a \$5000.00 security deposit.

He served the landlord by “Fed-Ex” package delivery to the address the landlord had given for himself in the written tenancy agreement. It was returned. Fed-Ex did not require any recipient signature on its delivery. The tenant then sent the documents by Fed-Ex to the rental unit address. They were not returned. No recipient signature for this delivery was required.

Analysis

Section 89 of the *Act* deals with service of applications for dispute resolution. It provides:

89 (1) 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*].

The interpretation section of the *Act* defines “registered mail” and states:

"registered mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available

The tenant is unable to show that the Fed-Ex service delivered the application by leaving a copy with the landlord or by any method under which delivery to a named person can be confirmed.

Conclusion

In these circumstances, the tenant has not proved service and the application cannot be proceeded with in the absence of the landlord. The application is therefore dismissed with leave to re-apply.

This decision was rendered orally at hearing and 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 21, 2015

Residential Tenancy Branch

