



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: O RR FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) Compensation for the landlord's breach of their privacy and reasonable enjoyment pursuant to section 28 and for the landlord creating unsafe living conditions in breach of sections 32 and 33 of the Act; and
- b) To recover their filing fee for this application.

Service and Evidence:

The landlord stated he was not legally served with the Application or documents. He said he only got Notice a week ago when he found documents on his floor and he has not had time to answer the case against him. The tenants testified they served him personally with the Application on March 30, 2015 but they had no witnesses to service. As a witness, they called their 15 year old daughter who they said was in the car at the time but the daughter refused to testify after I told the mother that she was negating the daughter's evidence by coaching her.

I find insufficient evidence that the landlord was legally served with the Application for Dispute Resolution hearing package pursuant to section 89 of the Act. The tenants verified with the landlord that his address on the Application is the correct one for registered mail service if they re-apply. He confirmed it was.

Analysis and Conclusion:

As explained to the tenants in the hearing, the onus of proof of legal service is on the applicant and there are two methods of legal service set out in section 89 of the Act. They are personal service to the respondent or service by registered mail. Since the tenant applicants were unable to prove legal service, their Application is dismissed with leave to reapply within the legislated time limits. No recovery of the filing fee is ordered due to lack of success.

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: September 04, 2015

Residential Tenancy Branch

