



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This teleconference hearing was convened to hear matters pertaining to the Landlord's application. The Landlord filed seeking to obtain an order to retain the security deposit and recover the filing fee from the Tenants for this application.

The Landlord's Agent appeared as the scheduled hearing; however, no one on behalf of the Tenants appeared.

Issue(s) to be Decided

Has the Landlord proven that each Tenant has been served with copies of the Landlord's application and notice of hearing documents?

Background and Evidence

The Landlord's Agent provided affirmed testimony that she recalled her father (the applicant Landlord) telling her that he had given the Tenants copies of the required documents. However, the Agent was not able to provide evidence as to when or how each Tenant was served.

The Landlord submitted documentary evidence which consisted of 32 pages of photographs with a description written beside each photograph. There were no photographs or descriptions pertaining to service of hearing documents.

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 Tenants, the burden of proof of service of the application and hearing documents lies with the applicant Landlord.

The Landlord's Agent was not able to provide evidence as to how or when each Tenant was served. Therefore, I find there was insufficient evidence to prove each Tenant was served in accordance with section 89 of 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. Accordingly, I dismiss the Landlord's claim, with leave to reapply.

Conclusion

The Landlord was not able to prove service of their application or hearing documents and the Landlord's application was dismissed, with leave to reapply.

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: October 22, 2015

Residential Tenancy Branch

