



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP RP LRE O SS

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 29, 2015. The Tenant filed seeking to obtain a Monetary Order; an Order to have the Landlord comply with the *Act*, regulation, and/or tenancy agreement; Orders for emergency repairs and to have the Landlord make repairs to the unit, site, or property; suspend or set conditions on the landlord's right to enter the rental unit; for other reasons; and for substitute service.

The hearing was conducted via teleconference and was attended by two agents for the Landlord, the Tenant and his Advocate. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Issue(s) to be Decided

1. Was service conducted in accordance with the *Act*?
2. If not, should this matter be dismissed with or without leave to reapply?
3. How may the Tenant serve an application for Dispute Resolution in the future?

Background and Evidence

The Landlord testified that he had been out of town for several days in November 2015 and one time when he returned home he found a copy of the Tenant's application posted to his door. The Landlord asserted that the application was not served in accordance with the *Act* and therefore he did not wish this matter to proceed today.

The Landlord submitted that he was personally served a copy of the Tenant's amended application sometime the week before the hearing. He could not confirm the exact date it was served.

The Tenant testified and confirmed that he had posted his application to the Landlord's door. He argued that he had requested substitute service on his application with all of the other items he was seeking and thought he could proceed with any method of service once he filed his application.

The Tenant stated that he personally served the Landlord with copies of his amended application in the presence of his Advocate. Neither the Tenant nor the Advocate knew the exact date that they had served the amended application to the Tenant.

The amended application listed information to increase the Tenant's monetary claim. There was no mention of the other dispute items which were listed on the original application for Dispute Resolution.

The Tenant argued that the Landlord is often out of town which makes it difficult to try and serve him personally with any documents.

The Resident Maintenance Person confirmed that he resides in the same building; however, he also does work at other buildings. He stated that as agent for the Landlord he could be personally served documents from the Tenant that he would pass onto the Landlord.

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*].

The undisputed evidence was the Tenant served the Landlord with copies of his application for Dispute Resolution by posting the application to the Landlord's door. A copy of the Amendment to an Application for Dispute Resolution was later served personally to the Landlord. The Application for Amendment referenced only an increase to the monetary order request and did not list all of the dispute items the Tenant listed on his initial application.

As indicated above, section 89 of the *Act* does not provide that a tenant can serve an application for Dispute Resolution by posting it to the landlord's door. Rather, an application must be served via registered mail or served personally to the landlord or their agent. Therefore, I find the Tenant's application was not served in accordance with the *Act* and it was dismissed with leave to reapply.

Section 1 of the *Act* defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

In this matter I find that both the Resident Manager and the Resident Maintenance Person meet the definition as an Agent for the Landlord. Accordingly, the Tenant can personally serve either Agent with copies of an Application for Dispute Resolution and that method of service will be considered to be completed in accordance with section 89(1)(b) of the *Act*.

Conclusion

The Tenant had not served his application upon the Landlord in accordance with the *Act* and the 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: December 07, 2015

Residential Tenancy Branch

