



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, OLC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The female Tenant stated that the Application for Dispute Resolution and Notice of Hearing were served to both Landlords, via registered mail, on July 25, 2015. She stated that the documents were sent to the rental unit. The Tenants submitted Canada Post documentation that corroborates this testimony.

The male Tenant stated that at least one of the Landlords was living at the rental unit when the Tenants moved into the unit on June 01, 2015 but he does not know if either Landlord moved back into the rental unit after the Tenants vacated on June 30, 2015.

The Tenants submitted a copy of the tenancy agreement signed by the parties. The tenancy agreement does not provide a service address for the Landlords, which is required by section 13 of the *Act*.

The Tenants submitted a copy of a "Title Search Print" which shows that one of the Landlord's is the owner of the rental unit.

Analysis:

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a landlord is to notify the landlord that a dispute resolution proceeding has been

initiated and to give the landlord the opportunity to respond to the claims being made by the tenant. When a tenant files an Application for Dispute Resolution in which the tenant has applied for a monetary Order, the tenant has the burden of proving that the landlord was served with the Application for Dispute Resolution in accordance with section 89(1) of the *Act*.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the landlord;
- (b) by leaving a copy with the agent for the landlord;
- (c) by sending a copy by registered mail to the address at which the landlord resides or carries on business as a landlord; or
- (d) (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

There is no evidence that the Application for Dispute Resolution was personally served to the Landlord or an agent for the Landlord. I therefore cannot conclude that the Application for Dispute Resolution has been served in accordance with sections 89(1)(a) or 89(1)(b) of the *Act*.

The undisputed evidence is that the Application for Dispute Resolution was sent to the rental unit by registered mail on July 25, 2015. In the absence of evidence that shows either Landlord was living at the rental unit or conducting business as a landlord at the rental unit in July of 2015, I cannot conclude that the Application for Dispute Resolution has been served in accordance with section 89(1)(c) of the *Act*.

There is no evidence that the director authorized the Tenants to serve the Application for Dispute Resolution to the Landlords in an alternate manner and I therefore cannot conclude that the documents were served in accordance with section 89(1)(e) of the *Act*.

The Tenants submitted no evidence to cause me to conclude that the Landlords received the I therefore cannot conclude that the Application for Dispute Resolution has been served in accordance with sections 89(1)(a) or 89(1)(b) of the *Act*, and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Tenants have failed to establish that the Landlords have been served with the Application for Dispute Resolution, I must dismiss the Application with leave to reapply.

Conclusion:

The Tenants' Application for Dispute Resolution has been dismissed with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution seeking the return of their security deposit; however they remain obligated to serve the

Landlords notice of their claim in accordance with the *Act*.

The Tenants may be able to serve documents to the Landlords by sending registered mail to the rental unit if they are able to establish that one of the Landlords is living/conducting business at the rental unit.

The Tenants may be able to personally serve documents to the Landlords where one of the Landlords works or at any other location where the Landlords are known to frequent.

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: January 13, 2016

Residential Tenancy Branch

