



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes MNDC, LRE, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; an Order to suspend or set conditions on the landlord's right to entry the rental unit; and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the review hearing, the landlord did not attend.

Procedural Issues

A previous hearing took place on December 14, 2015 for the tenant's application. The tenant did not attend that hearing and her application was dismissed without leave to reapply. The tenant applied for a review consideration of that decision and a review hearing was granted. The review consideration decision made on January 29, 2016 informed the tenant that she must serve the landlord with a copy of the review consideration decision and notices of the review hearing within three days of receiving the decision.

The tenant stated that she did not receive the decision until February 20, 2016 and went to serve the landlord at his new address on February 26, 2016. The landlord avoided service of these documents and the tenant served them to a man who came out of the landlord's house. The tenant also stated that she served her evidence package to the landlord on that date and provided it to the Residential Tenancy Branch on that date.

I refer the parties to s. 89 of the *Act* which states:

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].*

Accordingly I find the tenant did not serve the landlord in accordance to s. 89 of the *Act*. I am not satisfied that the tenant has shown that by handing these hearing documents to the man coming out of the landlord's house would result in the landlord receiving the hearing documents and having notice of this review hearing.

Analysis

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. As the tenant declared that the landlord was served by handing the hearing documents to a person leaving the landlord's house, I am unable to determine that the landlord was served in accordance with the section 89 of the *Act*. Furthermore I am not satisfied the tenant served the landlord within the three day time frame as indicated on the Review Consideration decision. I therefore dismiss the tenant's application.

Conclusion

The tenant's application is 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: March 01, 2016

Residential Tenancy Branch

