



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD FF

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for a Monetary Order for the return of double their security deposit, certain litigation costs and to recover the filing fee.

The tenant attended the conference call hearing. The landlord did not. The tenant provided testimony they placed the Notice of Hearing package in the landlord's mailbox some 3 months after making their application. The tenant testified they did not employ another method to serve the landlord in accordance with the Act.

Section 89 of the Act states as follows in reference to this type of matter – **emphasis mine**

Special rules for certain documents

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*].

The **Definitions** portion of the Act states as follows – in respect to registered mail service.

"registered mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available;

Section 89 of the Act deliberately operates to lend credibility to the presumption of service if a party is served in accordance with the ways listed. I find the tenant's method of serving the landlord to be inconclusive the landlord has been duly notified of the action against them, and therefore, unreliable; effectively not in accordance with the Act. As a result, I am not sufficiently satisfied the landlord has knowledge of this matter and the tenant's claim. Therefore, **I dismiss** the tenant's application, but I do so, *with leave to reapply*.

None of the potential merits of this application were heard.

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: April 05, 2016

Residential Tenancy Branch