



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on December 18, 2015. The Tenant filed seeking a Monetary Order for the return of double her security deposit; payment for a pool table; and recovery of the filing fee.

The hearing was conducted via teleconference and was attended by the Tenant and her Witness.

Issue(s) to be Decided

Has the Tenant proven the Landlord was sufficiently served notice of this proceeding?

Background and Evidence

The Tenant testified that she had sent the respondent Landlord two registered mail packages. She stated one package was sent on July 7, 2015 and the second package was sent on October 06, 2015.

Upon further clarification the Tenant stated she had sent the Landlord another registered mail package on May 13, 2016 and that package contained her evidence documents.

The Tenant was not able to provide evidence of how or when copies of her December 29, 2015 application for Dispute Resolution and Notice of Hearing documents were sent to 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*].

In the absence of the respondent Landlord the burden of proof of service of the application for Dispute Resolution and hearing documents lies with the applicant Tenant.

As indicated above, the Tenant was not able to provide evidence of how or when copies of her December 29, 2015 application for Dispute Resolution and Notice of Hearing documents were sent to the Landlord. Therefore, I find there to be insufficient evidence to prove the Landlord was served with Notice of this proceeding, in accordance with 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. As I have found there was insufficient evidence to prove the service of documents, I dismiss the Tenant's claim, with leave to reapply.

Conclusion

The Tenant was not able to prove service and her application for Dispute Resolution was dismissed, with leave to reapply.

This decision is final, legally binding, and 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: July 28, 2016

Residential Tenancy Branch