



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 to hear matters pertaining to an Application for Dispute Resolution filed on May 20, 2016. The Applicant filed seeking an \$800.00 monetary order for the return of double their security deposit plus recovery of the filing fee.

The hearing was conducted via teleconference and was attended by the Applicant. No one was in attendance on behalf of the Respondent.

Issue(s) to be Decided

Has the Applicant proven the Respondent was served notice of their application for Dispute Resolution and Notice of Hearing documents in accordance with the *Act*?

Background and Evidence

The Applicant initially testified that the Respondent was not the owner of the house and that she had knowledge the Respondent was a tenant. The Applicant then changed her submission stated she did not know the Respondent's position and did not know if she had authority to rent out rooms in the rental house.

The Applicant submitted she had knowledge that the Respondent vacated the rental house sometime near the beginning of this year, 2016. She stated she served the Respondent with copies of her application and notice of hearing documents via registered mail on May 21, 2016 to the rental unit address. That registered mail was returned to the Applicant unclaimed so the Applicant said she sent more copies of the documents to the Respondent via regular mail and via email.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

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, the Applicant bears the burden of proof that service of the application and hearing documents was completed in accordance with the *Act*. From her own submissions, the Applicant confirmed she served the application and hearing documents via registered mail to an address where the Respondent was no longer residing. Therefore, I find there was insufficient evidence to prove service was effected 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 service of the application and hearing documents we completed in accordance with the *Act*, I dismiss the application, with leave to reapply.

Conclusion

The Applicant was not able to prove service of the application and hearing documents and the application 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: November 21, 2016

Residential Tenancy Branch