



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application and a previous application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 25 minutes. The tenant and her agent sister, TP attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Tenant’s Application

The tenant testified that the landlord was served with the tenant’s application for dispute resolution hearing package on June 23, 2016 by way of regular mail and written evidence package on November 26, 2016 by way of regular mail.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (emphasis added):

89 (1) An application for dispute resolution ..., 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].**

I find that the tenant did not properly serve the landlord with her application because she sent it by regular mail, rather than registered mail. The tenant said that she was advised by an Arbitrator at a previous Residential Tenancy Branch (“RTB”) Hearing on August 26, 2015, that she was not required to send her application by registered mail if she had her package “postmarked” because it was too expensive for her. The file numbers for the previous two RTB hearings appear on the front page of this decision. I notified the tenant that the Arbitrator’s decision from the previous hearing on August 26, 2015 did not mention any information regarding service because it was only to decide the landlord’s application, which was dismissed since the landlord did not attend. I notified the tenant that there were no exceptions for personal monetary circumstances of parties and that all applicants were required to serve their applications by registered mail, requiring a signature upon delivery and a valid Canada Post tracking number and that proof of both were required for this hearing.

I also find that the tenant did not attempt to serve the landlord at an address at which she was residing or carrying on business, as required by section 89(1) of the Act. The tenant said that she served her application to the landlord at the rental unit address because that was the only address she had for the landlord. The tenant explained that the landlord lived in Europe but refused to provide her mailing address to the tenant. However, the tenant was provided with the same information above at the previous hearing on April 8, 2015, after which a decision, dated April 24, 2016, was issued stating the following (emphasis added):

*Section 89 of the Residential Tenancy Act provides that a landlord may be served with an application for dispute resolution by registered mail sent to the address at which the landlord resides or to the address where the landlord carries on business as a landlord. **The tenant sent documents landlord at the address of the rental unit. The landlord does not reside at that address. I do not have any document to show that the landlord carries on business from that address. I therefore find that the tenant has failed to prove that the landlord has been properly served with the application and Notice of Hearing...***

As the tenant failed to prove service in accordance with section 89(1) of the *Act*, I find that the landlord was not served with the tenant's application. At the hearing, I advised the tenant that I was dismissing her application with leave to reapply, with the exception of the \$100.00 filing fee. I notified the tenant that she would be required to file a new application and pay a new filing fee if she wished to pursue this matter further. I notified the tenant that she would have to prove service at the next hearing, regarding any residential or business addresses obtained from the landlord.

I notified the tenant that her previous application heard on April 8, 2015 was dismissed, so she was not entitled to recover the filing fee for the previous matter at this current hearing, as the matter has already been decided by another Arbitrator and is *res judicata*.

For the tenant's ease of reference, Residential Tenancy Policy Guideline 12 states the following:

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

For the tenant's ease of reference, section 71 of the *Act* regarding substituted service applications, states the following:

71 (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

During the hearing, I notified the tenant and her agent that they could consult a lawyer to obtain legal advice or speak to an information officer to obtain information, not legal advice, regarding the *Act*, *Regulation* or hearing process. I notified the tenant and her agent that I could not provide them with legal advice or information about how to serve their next application or what to include in the application.

Conclusion

The tenant's application to recover the \$100.00 filing fee for this current application is dismissed without leave to reapply.

The remainder of 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: December 15, 2016

Residential Tenancy Branch

