



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The male Tenant initially stated that he served the Landlord with the Application for Dispute Resolution and the Notice of Hearing by registered mail. He stated that he could not recall the exact date of service and he cannot locate the registered mail receipt.

The male Tenant subsequently stated that he is an employee of Canada Post and that he believes he served the Application for Dispute Resolution and the Notice of Hearing to the Landlord by giving it to a co-worker and asking that co-worker to deliver it to the Landlord's service address.

Analysis:

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to respondents is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made. When a tenant files an Application for Dispute Resolution in which the tenant has applied for a monetary Order, the tenant has the burden of proving that the landlord was served with

the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

- a. by leaving a copy with the person;
- b. by leaving a copy with an agent for the landlord;
- c. by sending a copy by registered mail to the address at which the person resides or carries on business; or
- d. as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Tenants submitted no evidence to show that the Application for Dispute Resolution was personally delivered to the Landlord or her agent and I therefore cannot conclude that she was served in accordance with sections 89(1)(a) or 89(1)(b) of the *Act*.

I find that there is insufficient evidence to establish that the Application for Dispute Resolution was sent to the Landlord by registered mail and I therefore cannot conclude that she was served in accordance with section 89(1)(c) of the *Act*. In reaching this conclusion I was mindful of the fact that the male Tenant originally testified that it was served by registered mail but he subsequently corrected his testimony and stated that a co-worker, who is a Canada Post employee, delivered it on his behalf. In the absence of any evidence that the Landlord was required to sign for this delivery, I cannot conclude that it was served by registered mail.

There is no evidence that the director authorized the Tenants to serve the Application for Dispute Resolution to the Landlord in an alternate manner, pursuant to section 71(1) of the *Act*. I therefore cannot conclude that she was served in accordance with section 89(1)(e) of the *Act*.

The Tenants submitted no evidence to cause me to conclude that the Landlord received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Tenants have failed to establish that the Application for Dispute Resolution was served to the Landlord, I am unable to proceed with the hearing in the absence of the Landlord.

Conclusion:

As the Tenants have failed to establish that the Application for Dispute Resolution was served to the Landlord, their Application for Dispute Resolution 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 13, 2016

Residential Tenancy Branch