



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Tenant initially stated that on August 08, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail.

The Tenant was asked to provide a Canada Post tracking number for the package that was allegedly sent on August 08, 2016. After searching for approximately 15 minutes, the Tenant stated that he was able to locate a Canada Post receipt for the registered mail he contends was sent on August 08, 2016. He cited the Canada Post tracking number on that receipt.

When the Tenant was asked to provide the date on the aforementioned Canada Post receipt, he acknowledged the receipt was dated July 26, 2016. When he was asked to explain how he could have mailed the Application for Dispute Resolution on July 26, 2016, given that it was filed on August 11, 2016, he stated that the registered mail he sent on July 26, 2016 was actually a written request for the return of his security deposit.

The Tenant was again asked how he served the Application for Dispute Resolution and the Notice of Hearing to the Landlord and he stated that they were sent, via registered mail, on August 11, 2016. The Tenant stated that he was able to locate a Canada Post receipt for the registered mail he contends was sent on August 11, 2016. He was asked

to provide the Canada Post tracking number on that receipt, at which time he provided a series of numbers that were not remotely similar to a typical Canada Post tracking number. When asked to explain why this “tracking number” was so different from the first tracking number he provided he stated that the package he mailed on August 11, 2016 was actually sent by regular mail, rather than registered mail.

The Tenant stated that he also served the Application for Dispute Resolution and the Notice of Hearing to the Landlord, via email, on August 11, 2016.

Analysis:

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a landlord is to notify the landlord that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the tenant. 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 accordance 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) 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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Tenant submitted no evidence to show that the Landlord or an agent for the Landlord was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that the Landlord was not served with these documents in accordance with sections 89(1)(a) or 89(1)(b) of the *Act*.

The Tenant submitted no evidence to show that the Application for Dispute Resolution was sent to the Landlord by registered mail and I cannot, therefore, conclude that this document was served to the Landlord in accordance with section 89(1)(c) of the *Act*.

There is no evidence that the director authorized the Tenant to serve the Application for Dispute Resolution to the Landlord in an alternate manner and I therefore find that the Landlord was not served in accordance with section 89(1)(e) of the *Act*.

The Tenant 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*.

In determining whether the Application for Dispute Resolution was properly served to the Landlord I placed no weight on the Tenant's testimony that it was sent to the Landlord, via regular mail, on August 11, 2016, as sending this document by regular mail is not a method of service authorized by section 89(1) of the *Act*.

In determining whether the Application for Dispute Resolution was properly served to the Landlord I placed no weight on the Tenant's testimony that it was emailed to the Landlord on August 11, 2016, as sending this document by email is not a method of service authorized by section 89(1) of the *Act*.

As the Tenant has failed to establish that the Landlord was served with the Application for Dispute Resolution in accordance with the legislation, I am unable to proceed with the hearing in the absence of the Landlord. The Tenant's Application for Dispute Resolution is dismissed, with leave to reapply.

Conclusion:

The Tenant's Application for Dispute Resolution is dismissed, with leave to reapply, which means that the Tenant may file another Application for Dispute Resolution seeking the return of his security deposit.

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: February 07, 2017

Residential Tenancy Branch