



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 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order 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 stated that on November 08, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord at the rental unit, via registered mail. The Tenant cited a tracking number that corroborates this statement. He stated that the package was returned to him by Canada Post as it was not claimed by the Landlord.

The Tenant stated that he does not believe the Landlord lives at the rental unit and he does not know who is currently living at the unit.

The Tenant stated that he has no reason to conclude that the Landlord received the Application for Dispute Resolution and the Notice of Hearing that were sent to the rental unit. He stated that he previously sent a letter to the Landlord at the rental unit, in which he requested the return of his security deposit, and he knows the Landlord received this particular letter.

Residential Tenancy Branch records show that on December 06, 2016 the Tenant informed the Residential Tenancy Branch that the Landlord did not respond to the registered mail that he sent to the Landlord and he was advised to retain a copy of the Canada Post receipt, with a tracking number for the purposes of proving service. The Tenant explained this at the hearing and understood it meant the hearing would proceed.

Analysis:

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to the landlord is to notify that party that a dispute resolution proceeding has been initiated and to give the landlord 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 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 of the landlord;
- (c) by sending a copy by registered mail to the address at which the landlord resides or 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 Application for Dispute Resolution was personally served to the Landlord and I therefore find that the Landlord was not served in accordance with section 89(1)(a) of the *Act*.

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

The Tenant submitted no evidence to show that the Application for Dispute Resolution was mailed to the Landlord's home or business address and I therefore find that the Landlord was not served in accordance with section 89(1)(c) of the *Act*. Rather, the evidence shows that the Application for Dispute Resolution was mailed to the rental unit. The Tenant presented no evidence to convince me that the Landlord resides or conducts business at the rental unit.

The Tenant submitted no evidence to show 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*.

As there is insufficient evidence to conclude that the Landlord has been properly served with the Application for Dispute Resolution or that the Landlord received the Application for Dispute Resolution, I am unable to proceed with the hearing in the absence of the Landlord. I therefore dismiss the Application for Dispute Resolution, with leave to reapply.

In considering this matter I have placed no weight on the Tenant's submission that the Landlord previously received a letter the Tenant sent to the rental unit, in which he requested the return of his security deposit. Even if the Landlord did receive this letter, perhaps because it was passed along by the new occupant or a third party, it does not establish that the Landlord was given notice that registered mail had been sent to the rental unit for the Landlord.

As the Tenant was advised during the hearing, it is irrelevant that the Tenant can establish that he has proof that he mailed the Application for Dispute Resolution to the rental unit, as that is not a method of service that is permitted by the section 89 of the *Act*.

Conclusion:

The Application for Dispute Resolution is dismissed, with leave to reapply. The Tenant retains the right to file another Application for Dispute Resolution.

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: April 06, 2017

Residential Tenancy Branch