



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for a Monetary Order for loss and retention of the security deposit, and to recover the filing fee.

The landlord attended the conference call hearing. The tenant did not. The landlord provided testimony they sent the tenant the Notice of Hearing package and their evidence through Canada Post. The landlord was unable to provide evidence for the required registered mail to the tenant whom resides outside of Canada. The landlord testified they did not employ another method to serve the tenant in accordance with the Act.

Section 89 of the Act states as follows in reference to this type of matter.

Special rules for certain documents

89 (1) 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*].

The **Definitions** portion of the Act states as follows – in respect to registered mail service for this matter.

"**registered mail**" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available;

Section 89 of the Act deliberately operates to lend credibility to the presumption of service if a party is served in accordance with the ways listed. I find the landlord's method of serving the tenant as inconclusive that the tenant has been duly notified of the action against them, and therefore, unreliable, and effectively not in accordance with the Act. As a result, I am not sufficiently satisfied the tenant has knowledge of this matter and of the landlord's claim. Therefore, **I dismiss** the landlord's application, but I do so, *with leave to reapply*.

None of the potential merits of this application were heard.

Conclusion

The landlord's application **is dismissed**, with leave to reapply.

It must be noted it is available to parties to obtain information from an Information Officer at Residential Tenancy Branch or *the Residential Tenancy Branch* website: **www.gov.bc.ca/landlordtenant**.

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: August 28, 2017

Residential Tenancy Branch