



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AVALON HOTEL
ORLANDO APARTMENTS 1006478 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

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.

The landlord did not attend this hearing, which lasted approximately 11 minutes. The tenant attended the hearing and was 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 a copy of the tenant's application for dispute resolution hearing package. He said that it was sent by regular mail and it was likely on April 13, 2017 but he was not sure of the exact date.

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].

Residential Tenancy Policy Guideline 12 states the following, in part (emphasis added):
*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*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**.*

The tenant sent the application by regular mail, which is not permitted under section 89(1) of the *Act*. Registered mail with a signature upon delivery and a tracking number is required. The tenant was also unable to confirm the exact date and cited April 13, 2017, which is prior to the notice of hearing being generated on April 24, 2017.

Accordingly, I find that the tenant failed to prove service in accordance with section 89(1) of the *Act* and the landlord was not served with the tenant's application.

At the hearing, I informed the tenant that I was dismissing his application with leave to reapply. I notified him that he would be required to file a new application and pay a new filing fee, if he wished to pursue this matter further. I cautioned him that he would have to prove service at the next hearing, including specific evidence regarding a registered mail date and tracking number.

Conclusion

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: September 14, 2017

Residential Tenancy Branch