



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$1000.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of one of the applicants and in the absence of the respondents. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Preliminary Matter:

One of the fundamental principles of our legal system is that applicant must prove that the respondent(s) have been given notice of a claim being made against him/her before an arbitrator can consider the claim.

Issue:

Has the applicant provided sufficient evidence to establish the landlord has been served with this Application for Dispute Resolution?

Background and Evidence:

The parties entered into a one month fixed term written tenancy agreement that provided that the tenancy would start on June 30, 2017 and end on July 29, 2017. The rent was \$1200 per month. The tenancy agreement provides that the tenant paid a security deposit of \$400. In addition he paid a \$100 deposit for a FOB.

The tenant vacated at the end of the fixed term. He testified he has attempted to recover the security deposit from the landlord but has not been successful. Other tenants have advised him that the landlord commonly keeps the security deposit without lawful right.

The tenant produced the copy of a letter dated August 17, 2018 requesting the return of the security deposit and FOB deposit. The letter provides a forwarding address but it does not give a postal code for the forwarding address. He testified he sent the letter by registered mail to the address of service on the tenancy agreement. The document was returned to him by Canada Post with a notation "moved."

The tenant testified he conducted a Land Title search of the address for service set out in the tenancy agreement. The Land Title search indicates the property is still owned by the landlords and it gives the address of the registered owner as that address. That address was submitted to the Land Title Office in September of 2006.

The tenant testified he served the Application for Dispute Resolution/Notice of Hearing by mailing, by registered mail to the address for service set out in the tenancy agreement and on the Land Title Office search. The documents were not returned. He failed to provide the Branch with a copy of the receipt for the hearing. I gave the tenant to the close of business the next day to submit the receipt and evidence from Canada Post that the Application for Dispute Resolution was served on the Landlord(s). The Tenant provided the Branch with a receipt within the period but failed to provide evidence from Canada Post that the documents were served on the Landlord.

The tenant did not use the registered mail service provided by Canada Post. Rather the Tenant used a form of delivery offered by Canada Post which can track a parcel but does not require the recipient to sign for the package. The tenant testified it was less expensive than the method he previously used attempting to serve the letter containing his forwarding address.

Policy Guideline #12 includes the following:

“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.

Proof of service personally on an adult who apparently resides with the tenant should include:

- either an acknowledgment of the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents as well as confirmation that the person is an adult; or,
- witness confirmation of service on the adult including date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served as well as a description of how the witness knows the person served is an adult who apparently resides with the tenant.

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.”

Analysis:

I determined the Tenant failed to provide sufficient evidence of service of the Application for Dispute Resolution/Notice of Hearing on the Landlord and as a result I dismissed the Application with liberty to re-apply for the following reasons:

- The Tenant failed to provide sufficient evidence that the documents were served on the landlord or sent by registered mail to where the landlord resides.
- The receipt produced by the Tenant does not provide evidence of the address where it was sent. Further, it indicates the tenant used a form of delivery offered by Canada Post that does not provide a signature of receipt of the documents.
- The tenant failed to provide evidence from Canada Post that the package was delivered to an address with the respondent lives or carries on business.
- The previous registered mail sent to the landlord that includes the tenant's forwarding address was returned with the notation "moved."
- The Land Title search which provides an address of the registered owner for the address set out in the tenancy agreement is of little help as that search indicates the address was given when the landlord purchased the property in 2006.
- I am not able to conclude that the Landlords were served by the fact the documents were not returned.

Conclusion.

As the tenant(s) were not able to prove service on the Landlord I ordered that the application be dismissed with liberty to re-apply.

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: March 30, 2018

Residential Tenancy Branch