



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend the hearing.

Preliminary Issue: Service of Tenant's Application

The tenants testified that on September 12, 2017, they sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by Registered Mail. The tenants provided a tracking number during the hearing as proof of service. The tracking number provided by the tenants was for an item sent out for delivery on September 7, 2017. The tenants' application was filed on September 19, 2017 so the package allegedly mailed out to the landlord on September 7, 2017 could not have been the tenants' application and Notice of Hearing.

The tenants also testified that on September 24, 2017, they attempted to deliver a copy of the application package to the landlord in person. They testified the landlord came to the door but would not open the door. They put the application package through the mail slot on the door. The tenants submitted they have video footage of the attempted service but did not submit it as evidence prior to this hearing.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

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 document]...*

As the tenants were not able to provide a registered mail receipt or tracking number, I am not satisfied the landlord has been served with the tenants' application for dispute resolution by registered mail or in any other manner required by section 89(1) of the *Act*. The tracking number provided by the tenants pre-dated the filing of the application and the tenants did not submit sufficient evidence that the landlord was served in person.

Conclusion

I dismiss the tenant's application 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: April 19, 2018

Residential Tenancy Branch