



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit and a rent refund?

Background and Evidence:

The female Tenant stated that on October 29, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted with the Application were served to the Landlord by placing them in the Landlord's mailbox.

Analysis:

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to landlord(s) is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the tenant(s). When a tenant files an Application for Dispute Resolution in which the tenant applies 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 landlord;
- (b) by leaving a copy with an agent for 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) of the *Act*.

The Tenants submitted no evidence to show that the Landlord was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that the Landlord was served in accordance with section 89(1)(a) of the *Act*.

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

The Tenants submitted no evidence to show that the Application for Dispute Resolution was sent by registered mail to the Landlord and I therefore cannot conclude that the Landlord was served in accordance with section 89(1)(c) of the *Act*.

There is no evidence that the director authorized the Tenants 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*.

I find that the Application for Dispute Resolution was served to the Landlord by leaving it in his mailbox. As this is not a method of serving the Landlord that is authorized by section 89 of the *Act*, I cannot conclude that he has been properly served with the Application for Dispute Resolution.

The Tenants 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*.

I proceeded with the hearing as I mistakenly concluded that the Landlord had been properly served with the Application for Dispute Resolution and the Notice of Hearing. Upon reflection I must now conclude that the Landlord has not been properly served with the Application for Dispute Resolution and the Notice of Hearing.

As the Landlord was not properly served with the Application for Dispute Resolution and the Notice of Hearing, the hearing should not have proceeded in the absence of the Landlord. The Tenants' Application for Dispute Resolution is therefore dismissed, with leave to reapply.

As this Application for Dispute Resolution is dismissed, with leave to reapply, I find it is not necessary to record the testimony that was provided to me during the hearing, with the exception of the testimony regarding service.

Conclusion:

The Application for Dispute Resolution is dismissed, with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution in which they apply for a rent refund and to recover their security deposit.

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: May 29, 2018

Residential Tenancy Branch