



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FF

Introduction

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

- a monetary order for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that her partner sent the tenants a copy of the Landlord's Application for Dispute Resolution (the Application), including notice of this hearing, by registered mail. The landlord was not certain of the date that the package was sent by registered mail and did not have a tracking number to confirm this service. The landlord stated that her partner was not available to provide sworn testimony regarding service of the Application to the tenants.

In this type of matter, the landlord must prove they served the tenant with the Application, with all the required inclusions as indicated on the Notice as per subsections 89 (1) of the *Act* which permit service leaving a copy with the person or "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." The definition of registered mail is set out in section 1 of the *Act* as "any

method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

I find that the landlord was not able to provide a tracking number or any other type of evidence to confirm service of the Application to the tenants.

Since I am not able to confirm that the landlord has served the tenants with the Application in accordance with section 89 of the *Act*, I dismiss the landlord’s application for a Monetary Order and to retain the tenants’ security deposit, with leave to reapply.

I make no findings on the merits of the matter.

Leave to reapply is not an extension of any applicable limitation period.

As the landlord has not been successful in this Application, I dismiss their request to recover the filing fee from the tenants, without leave to reapply

Conclusion

The landlord’s Application for Monetary Order for damage to the unit and to retain all or a portion of the tenants’ security deposit is dismissed, with leave to reapply.

The landlord’s Application to recover the filing fee from the tenants is dismissed, without 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: July 27, 2018

Residential Tenancy Branch