



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation from the Tenant for damage to the rental unit or property; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I inquired with the Agent regarding service of the documents as explained below.

In the hearing the Agent testified that she hired a skip tracer to locate the Tenant’s address as the Tenant failed to provide a forwarding address at the end of the tenancy. However, no documentary evidence was submitted to support this testimony. The Agent testified that copies of the Application, the Notice of Hearing, and the documentary evidence before me for consideration were sent to the Tenant at the address located by the skip tracer by express post on April 20, 2018. When asked, the Agent provided me with the tracking number for the express post package but acknowledged that no signature was required for receipt of the package. With the Agents consent, I logged into the mail service provider’s website but the tracking number provided by the Agent was not recognized. Further to this, the Agent testified that she has no knowledge or proof of whether the Tenant ever received this package by mail.

Section 59 of the *Act* states that a person who makes an application for dispute resolution must give a copy of the application to the other party within three (3) days of making it, or within a different period specified by the director. Section 89 of the *Act* also states that an application for dispute resolution, when required to be given to a tenant

by mail, must be given by registered mail to the address at which the tenant resides or to the forwarding address provided by the tenant.

Residential Tenancy Policy Guideline 12 states that registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. Further to this, rule 3.5 of the Rules of Procedure states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and the Rules of Procedure.

As the Agent testified that the Tenant did not provide a forwarding address, and failed to provide any documentary or other evidence to corroborate their testimony that the Tenant resides at the address used for mailing the Notice of Dispute Resolution Proceeding Package and evidence, I am not satisfied, on a balance of probabilities, that the address used by the Agent is in fact the address at which the Tenant resides.

Further to this, no signature was required for receipt of the package sent to the Tenant, the tracking number provided by the Agent in the hearing is not recognized by Canada Post, and the Agent testified that she has no confirmation that the package was delivered to the Tenant. As a result, I am also not satisfied, on a balance of probabilities, that the Application was sent by registered mail as required by section 89 *Act* and defined by Residential Tenancy Policy Guideline 12.

Based on the above, I am not satisfied that the Tenant had the opportunity to know the case against her or to appear in her defense. As the opportunity to know the case against you and to provide evidence in your defense are fundamental to the dispute resolution process, I find that it would be administratively unfair and a breach of both the Rules of Procedure and the principles of natural justice to accept the Application for consideration.

In the Application the Agent also stated that this is a subrogated claim matter filed by the insurer for the Landlord. Testimony was subsequently provided by the Agent regarding this statement which caused me to question whether this matter falls within the jurisdiction of the Residential Tenancy Branch (the "Branch") and I advised the Agent of these concerns in the hearing.

However; upon further consideration, I have made no findings of fact or law in relation to whether the Branch has jurisdiction to hear this matter as I have already determined that the Application and the Notice of Hearing were not served on the Tenant in

accordance with the *Act* and the Rules of Procedure. As a result, the Application is therefore dismissed with leave to reapply. The Landlord and their agents may wish to seek independent legal advice on whether the Branch has jurisdiction to hear this matter.

Conclusion

The Landlord's Application is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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: October 31, 2018

Residential Tenancy Branch