



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This decision is in respect of the tenant's application for dispute resolution made under the *Residential Tenancy Act* (the "Act"). The tenant seeks a monetary order for the return of his security deposit, pursuant to sections 38 and 67 of the Act.

A dispute resolution hearing was convened on October 18, 2018. The tenant attended and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord did not attend.

Preliminary Issue: Service of the Notice of Dispute Resolution Proceeding

The tenant testified that he served the Notice of Dispute Resolution Proceeding package (the "Notice") on the landlord by registered mail. When I asked when he mailed the Notice, he was unable to recall, and referred me to copies of two Canada Post receipts which he submitted into evidence.

In reviewing the two receipts, they were dated for June 25, 2018, and the amounts were \$1.25 on one receipt and \$0.37 on the other receipt. The amounts on the receipts do not reflect Canada Post's \$9.00 fee for registered mail (excluding the additional postage price). The tenant was unable to provide me with a tracking number, which provides documentary evidence that mail was sent by registered mail, and which often provides additional evidence that mail was received by the intended recipient.

Section 59(3) of the Act requires an applicant to provide a copy of the application for dispute resolution (that is, the Notice) to the other party within 3 days of making the application. And, a copy of the Notice must be given in a manner required under section 89(1) of the Act.

Section 89(1) of the Act states that a Notice must be given to the other party (1) by leaving a copy with the other person, (2) by leaving a copy with an agent of the landlord, (3) by sending a copy by registered mail, or (4) as ordered by an arbitrator.

Rule 3.5 of the *Rules of Procedure*, under the Act, 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 these Rules of Procedure.”

In this case, while the tenant said “I’m sure he’s received it,” I am not satisfied on a balance of probabilities that the landlord received the Notice in compliance with section 89(1) of the Act, as required by section 59(3). What appears to have happened is the tenant mailed the Notice by regular mail (which would correspond with the amounts reflected in the Canada Post receipts), and which is not an acceptable method of service. As such, I dismiss the tenant’s application, with leave to reapply.

If the tenant chooses to file another application for the return of his security deposit, he must serve the landlord pursuant to section 89(1) of the Act and ensure that he retains copies of all Canada Post registered mail documentation for any subsequent hearing.

Conclusion

I dismiss the tenant’s application with leave to reapply.

I make no findings of fact or law in respect of the underlying dispute of this application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 18, 2018

Residential Tenancy Branch