



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNRL-S

Introduction

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

- a return of their security deposit pursuant to section 38 of the *Act*;
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*; and
- a Monetary Order as compensation for loss under the *Act* pursuant to section 67.

Both tenants and the landlord attended the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

Following opening remarks, the tenants stated they had not received the landlord's application for dispute or evidentiary package. The tenants said they had only been informed of the proceedings after receiving an email from the Residential Tenancy Branch informing them of the hearing.

The landlord explained she received the tenants' forwarding address on April 2, 2017 following their move out in mid-March 2017. The landlord said she attempted to serve both her application for dispute and evidentiary package to the tenants in a method as prescribed by the *Act*. Specifically, the landlord said she placed the applications for dispute and evidentiary packages on the door "in a conspicuous place" on July 7, 2018 with a witness. The landlord said the address where these documents were left was the address provided to her by the tenants.

The tenants disputed receipt of any documents stating they had moved from the Province shortly after moving from the rental unit.

Preliminary Issue – Service of Documents

Section 88 of the *Act* states as follows:

All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this *Act* to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address **at which the person resides** or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Section 89 states, "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 documents*].

I find the landlord has failed to serve the Notice of Hearing pursuant to section 89 of the *Act*, or to serve the evidence on which she intends to rely on at the hearing in accordance with section 88 of the *Act*. While some testimony was provided to the hearing by the landlord related to the method in which her application for dispute and evidentiary packages were served on the tenants, I accept the tenants' testimony they had moved from the province and the forwarding address provided to the landlord was not correct. Furthermore, I find the landlord did not serve the tenants with the notice of hearing in accordance with section 89 of the *Act* as a hearing notice may not be left in a spot as described by the landlord. For these reasons the landlord's application for a monetary award is dismissed with leave to reapply. The landlord may wish to seek further information related to substitute service methods.

Conclusion

The landlord's application for a monetary award is dismissed 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: November 19, 2018

Residential Tenancy Branch