



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double their security and pet damage deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. in order to enable them to call into this teleconference hearing scheduled for 11:00 a.m. The tenant and an assistant attended the hearing and the tenant was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant, the tenant's assistant and I were the only ones who had called into this teleconference.

Preliminary Issue- Service of Application for Dispute Resolution

The tenant gave sworn testimony that they sent a copy of their dispute resolution hearing package to the landlord at the address of the rental unit by registered mail on November 7, 2018. The tenant testified that in the six plus months that she resided at the rental property, a number of documents were mailed to and received by the landlord at the address of the rental property. Although they provided the Canada Post Tracking Number orally, they did not know whether this registered mailing had been successfully delivered to the landlord.

A preliminary check of the Canada Post Online Tracking System could not confirm that the hearing package had been successfully delivered to the landlord, although a final notice had been left for the landlord at that address.

Analysis - Service of Application for Dispute Resolution

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) 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 document]...*

While there is undisputed sworn testimony that the tenant sent the landlord a copy of their dispute resolution hearing package by registered mail to the landlord at the address of the rental unit, there is conflicting evidence as to whether this was the address that the landlord was using to carry on the business of the tenant's landlord. The tenant said that this was the only address the landlord had provided to the tenant. However, the tenant's written evidence in the form of the signed Residential Tenancy Agreement (the Agreement) identified another Address for Service of tenancy related documents. The tenant gave sworn testimony that during their six-month tenancy, the landlord had not provided the tenant with any new mailing address for the service of documents, and had not advised the tenant that they had moved from the address identified in the Agreement for service of documents.

As there was no clear evidence that the landlord had actually received a copy of the dispute resolution hearing package sent by the tenant to an address that varied from that identified in the Agreement, I advised the tenant that I was not satisfied that they had demonstrated that the landlord was properly served with copies of the tenant's

application for dispute resolution. Under these circumstances, I dismiss this application with leave to reapply.

In so doing, I also noted that the tenant needed to provide the landlord with written notice of their forwarding address for the purposes of returning the tenant's security and pet damage deposit pursuant to section 38 of the *Act*. The tenant's written evidence contained only a text message provision of this information, which may or may not have been received by the landlord. Text messages may not be viewed as meeting the definition of a provision of the tenant's forwarding address in writing as set out in section 38 of the *Act*.

Conclusion

I dismiss the tenant's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*.

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: December 10, 2018

Residential Tenancy Branch