



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent and damage to the rental unit, via teleconference call. The landlord also sought to increase the monetary claim by way of an Amendment submitted on September 6, 2018. The landlord appeared at the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for at least 15 minutes.

Since the tenant did not appear at the hearing, I explored service of hearing documents upon the tenant. Where a respondent does not appear at the hearing, the applicant bears the burden to prove the respondent was duly served with the hearing documents in a manner that complies with the Act.

The landlord testified that on September 1, 2018 he went to the postal outlet and purchased the registered mail service from Canada Post; however, when he learned that Canada Post would only leave a notice card on the outside of the tenant's building the landlord took the hearing package back and attempted to deliver it himself. The landlord testified that he gave the hearing package to a person named "Charlie" and that "Charlie" and the tenant lived together based on what "Charlie" told the landlord.

The landlord provided a tracking number for the registered mail service he purchased but did not use. The landlord explained that he wanted some proof he served the hearing so he got a receipt from Canada Post even though he did not use their service.

The landlord also testified that he served evidence by personal delivery on August 7, 2018. I pointed out that his hearing package was not generated until August 28, 2018 so any hearing documents or evidence would be served upon the tenant no earlier than

August 28, 2018. The landlord maintained that he served his evidence, namely post-dated cheques and some photographs, on August 7, 2018.

Where an applicant seeks a Monetary Order the applicant must serve the respondent with a hearing package in a manner that complies with section 89(1) of the Act. An Amendment to increase a monetary claim must also be served in a manner that complies with section 89(1).

Section 89(1) of the Act permits a party to serve by registered mail or personal delivery to the respondent. In this case, the landlord testified that although he had a registered mail receipt dated September 1, 2018 he did not use the services of Canada Post to deliver the hearing package. As such, I find that I cannot accept that the landlord served the tenant with notification of this proceeding via registered mail. Nor, did the landlord give the hearing documents to the tenant himself. It is not enough to give the hearing documents to another person that may reside at the same location as the respondent. Therefore, I find the tenant was not duly served with notification of the landlord's claims and I dismiss this application with leave to reapply.

The landlord is at liberty to make another Application so as to properly serve the tenant. The time limit for making an application is within two (2) years of the tenancy ending.

Conclusion

The landlord's application is dismissed with leave.

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 20, 2018

Residential Tenancy Branch