



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of the security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 17 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Tenant's Application

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing package on January 2, 2019, by way of registered mail. The tenant's application was filed on September 7, 2018, but he claimed that he did not receive a notice of hearing package from the Residential Tenancy Branch until recently.

When I questioned the tenant as to what address the application was sent to, he said it was the rental property address where the landlord used to live but that the landlord sold it within two months of April 2018. He said that the mail was returned to him as the sender, indicating there was no forwarding address for the landlord.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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 documents].*

I find that the tenant was unable to show that the address where he sent his application was a residential address or a business address for the landlord. It was sent to an old residential address, where the tenant knew the landlord was no longer living, and the landlord had sold the property months earlier. The mail was returned to sender. The landlord did not appear at this hearing to confirm receipt of the application.

The tenant provided a substituted service application uploaded as evidence with his file, not as an application made in advance of the hearing in order to serve his application documents. The tenant did not provide the required recent email evidence with his substituted service application, and a decision had not been made by an Arbitrator regarding this application prior to the hearing.

Accordingly, I find that the tenant failed to prove service in accordance with section 89(1) of the *Act* and the landlord was not served with the tenant's application.

At the hearing, I informed the tenant that I was dismissing his application with leave to reapply, except for the filing fee. I notified him that he would be required to file a new application and pay a new filing fee, if he wishes to pursue this matter further. I cautioned him that he would have to prove service at the next hearing, including recent documentary evidence of the landlord's address.

I also notified him that he could apply for a substituted service order under section 71 of the *Act*, in advance of the hearing, in order to obtain an order from an Arbitrator to serve documents outside of section 89 of the *Act*, with evidence of recent communications with the landlord. I notified him that he could consult an information officer for information, not legal advice, at the Residential Tenancy Branch.

For the tenant's information, RTB Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service**, or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report**.*

Conclusion

The tenant's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the tenant's application 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: January 15, 2019

Residential Tenancy Branch