



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 5, 2018 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants appeared at the hearing. Nobody appeared for the Landlord. I explained the hearing process to the Tenants who did not have questions in this regard. The Tenants provided affirmed testimony.

The Tenants had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and Tenants’ evidence.

The Tenant testified that the hearing package and evidence were sent twice, once by regular mail in December and once by registered mail. She advised that the first package sent by regular mail was returned indicating the recipient had moved. The Tenant testified that the second package was sent by registered mail on January 12, 2019. This package had also been returned and a photo of it was submitted as evidence.

The photo shows Tracking Number 1. It shows the package was returned because the recipient had moved. There is also a note stating “vacant lot” on the front of the package. I looked Tracking Number 1 up on the Canada Post website. It shows the package was sent January 7, 2019 and returned as the recipient is not located at the address.

The Tenant testified that both packages were sent to the address noted on the Application for the Landlord. She said the Tenants got this address for the Landlord from a Notice of Rent Increase signed and dated July 8, 2017. This was submitted as evidence.

The Tenant testified that the Tenants tried to contact the Landlord to confirm the address but that the Landlord never responded. The Tenants did not have more recent evidence that the address on the Notice of Rent Increase from 2017 continued to be the Landlord's address. They confirmed they relied on the Notice of Rent Increase from 2017 for the Landlord's address.

Section 89(1) of the *Residential Tenancy Act* (the "Act") sets out the methods of service permitted for applications for dispute resolution requesting monetary compensation and states:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;

...

(e) as ordered by the director under section 71 (1)...

The Tenants, as applicants, must satisfy me that the Landlord was served with the hearing package and evidence in accordance with the *Act*. Rule 3.5 of the Rules of Procedure (the "Rules") states:

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.

I am satisfied that the Tenants sent the hearing package and evidence by registered mail on January 7, 2019. However, both the first package and package sent January 7th were returned because the recipient had moved. Further, the package sent January 7th states "vacant lot" on the front.

The Tenants used an address for the Landlord that was provided approximately a year and six months prior to the hearing package and evidence being sent. I do not find this to be reliable evidence of the Landlord's current address. The Canada Post information seems to confirm that this is no longer the Landlord's address.

I note that I would have found the Tenants were entitled to use this address up until the end of the tenancy if that is the address the Landlord provided and the Landlord did not update the address. However, the Tenants confirmed the tenancy ended May 4, 2018, approximately seven months prior to the hearing package and evidence being sent to the Landlord. The Landlord had no obligation after the end of the tenancy to update the Tenants in relation to her address. Nor do I accept that the Tenants continued to be entitled to serve the Landlord at that address approximately seven months after the end of the tenancy.

In the circumstances, I am not satisfied the address used continues to be the Landlord's address or that the Tenants were entitled to use this address for service of the hearing package and evidence.

I have no evidence before me that the Landlord received the hearing package and evidence or notice of this hearing. The Landlord did not appear at the hearing.

In the circumstances, I am not satisfied of service and therefore dismiss the Application with leave to re-apply. This does not extend any time limits set out in the *Act*.

Conclusion

I am not satisfied the Landlord was served with the hearing package and evidence in accordance with the *Act* and am not satisfied the Landlord received the hearing package.

The Application is dismissed with leave to re-apply. This does not extend any time limits set out in 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 *Act*.

Dated: January 31, 2019

Residential Tenancy Branch