



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENDERBY LODGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OT, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 31, 2018 (the “Application”). The Tenant applied for repairs and compensation for monetary loss or other money owed.

The Tenant filed an amendment dated January 8, 2019 changing the monetary claim to \$3,747.00 (the “Amendment”). The materials submitted also indicated that the Tenant sought return of the security deposit.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. A third party, unrelated to this matter, called in during the hearing and was asked to exit the conference call.

The Tenant confirmed the correct name of the Landlord and this is reflected in the style of cause.

The Tenant advised that he had been evicted and therefore the request for repairs was no longer an issue.

I explained the hearing process to the Tenant who did not have questions in this regard. The Tenant provided affirmed testimony.

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

The Tenant testified that the hearing package and evidence were sent to the Landlord by regular mail on January 4, 2019. The Tenant testified that he sent the Amendment by registered mail on January 9, 2019. The Tenant confirmed he did not include the original hearing package in the package with the Amendment.

Section 89(1) of the *Residential Tenancy Act* (the “*Act*”) outlines the methods of service permitted for an application for dispute resolution and states:

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].

[emphasis added]

Here, the original hearing package was sent by regular mail and not registered mail. I am not satisfied the original hearing package was sent in accordance with the *Act*. Nobody appeared at the hearing for the Landlord. There is no documentary evidence before me confirming the Landlord received the original hearing package. The Tenant testified that one of the owners for the Landlord confirmed receiving the hearing package and evidence. However, I do not find verbal testimony on this point sufficient when the package was not sent in accordance with the *Act*.

I acknowledge the Tenant sent the Amendment by registered mail and that this complies with section 89(1)(c) of the *Act*. However, this package did not include a copy of the original Application, notice of hearing, fact sheet or respondent instructions.

Service of the original Application and notice of hearing are important as it is the notice of hearing that provides the hearing date, time and access codes.

In the circumstances, I am not satisfied the Landlord was served with the original Application and hearing package in accordance with the *Act*. I 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 of service and therefore dismiss the Application 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: February 07, 2019

Residential Tenancy Branch