



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 10, 2018 (the “Application”). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing with a friend who assisted her given a language barrier (the “Translator”). The Landlord did not appear at the hearing. I explained the hearing process to the Tenant and Translator and answered their questions in this regard. The Tenant and Translator 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 as follows through the Translator. The hearing package and evidence were sent to the Landlord through Canada Post on October 17, 2018. The package was sent to the rental unit address. The Tenant knew the Landlord lived at this address as the Landlord told her she did back in May of 2018. Tracking Number 1 relates to this package.

The Tenant further testified as follows through the Translator. She sent the hearing package and evidence to the Landlord twice. The second package was sent to the rental unit address. It included the hearing package and evidence. Tracking Number 2 relates to this package.

I looked these tracking numbers up on the Canada Post website. The website shows the package with Tracking Number 1 was delivered October 18, 2018. It does not show that the package was signed for. It shows that the package was sent Xpresspost. On

the delivery confirmation it states, "signature option was not requested". There is no signature or name shown.

The website shows the package with Tracking Number 2 was sent June 23, 2018.

I asked the Tenant how the hearing package and evidence could have been sent June 23, 2018 when the Application was not filed until October 10, 2018. I found it difficult to understand the response of the Translator given a language barrier. I understood the Translator to refer to the Tenant going to city hall and the Civil Resolution Tribunal previously.

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;

...

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

[emphasis added]

Registered mail is defined in section 1 of the *Act* as follows:

"registered mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available [emphasis added]

I do not accept that the package with Tracking Number 2 on it included the hearing package and evidence for this hearing given it was sent in June of 2018, four months

prior to the Application being filed. The Tenant would not have had a hearing package for this hearing prior to filing the Application as this is only generated and available once an application for dispute resolution has been filed. If the package related to a different proceeding, this is not sufficient. The Tenant was required pursuant to the *Act* and Rules of Procedure to serve the Landlord with the hearing package and evidence for this specific matter and hearing.

Nor do I accept that the package with Tracking Number 1 on it was served in accordance with the *Act*. As stated in the *Act*, if an application for dispute resolution is mailed to the respondent, it must be done through Canada Post by a method that allows for delivery confirmation to a named person. The Tenant did not request the signature option as noted on the delivery confirmation and Canada Post website. I am not satisfied this method of service allowed for delivery confirmation to a named person.

The Landlord did not submit evidence which may have satisfied me that she received the hearing package and evidence. Nor did the Landlord appear at the hearing to confirm she received these items.

In the circumstances, I am not satisfied the Landlord was served with the 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 05, 2019

Residential Tenancy Branch