



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on October 16, 2018. The Landlord applied for a monetary order for damages to the rental unit, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

One of the Landlords attended the hearing was affirmed to be truthful in her testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documents was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Landlord testified that the Application for Dispute Resolution and Notice of Hearing document had been sent to the Tenant by Canada Post registered, the Landlord provided a tracking number for the mailing into documentary evidence. The Landlord also testified that she had not received a forwarding address from the Tenant and had sent the mailing to a PO Box the Tenant had used during their tenancy. The Landlord could not confirm if the Tenants was still using the PO Box and testified that she knew that the Tenant was in a treatment program but was not able to find out where the Tenant was currently living.

I reviewed the Canada Post Tracking number provided by the Landlord, and I noted that the tracking number was for a registered mail sent on September 26, 2018. I find the Landlord's testimony regarding service of the Notice of Hearing documents by Canada Post to be untrue as the Residential Tenancy Branch had not created the Notice of

Dispute Resolution Hearing document until October 16, 2018, 20 days after this Canada Post registered mail tracking number had been sent.

The Landlord then testified that on November 3, 2018, the Tenant had attended the rental unit and she had personally served the Tenant the Notice of Dispute Resolution Hearing documents. The Landlord testified that she had a witness to this service but had not submitted a statement from this witness nor was this witness available to provide a witness statement during these proceedings. When this arbitrator attempted to point out the inconsistencies in the Landlord evidence and testimony regarding service, the Landlord became aggressive and hung up on these proceedings.

Due to the inconsistency in the Landlord's evidence and testimony, I am not satisfied that the Notice of Dispute Resolution Hearing documents had been served to the Tenant, in accordance with the *Act*.

I find that the Tenant has not been duly served the notification of this hearing as required, pursuant to section 59 of the *Act*.

Therefore, I dismiss the Landlord's application with leave to reapply. This decision does not extend any legislated timelines pursuant to the *Act*.

Conclusion

I dismiss the Landlord's application 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: February 11, 2019

Residential Tenancy Branch