



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, MNDCT

Introduction

This hearing was scheduled to deal with a tenant's application to dispute an additional rent increase; obtain orders for the landlords to comply with the Act, regulations or tenancy agreement; and, obtain a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. The tenants appeared at the hearing; however, there was no appearance on part of the landlords.

The tenants confirmed that they no longer reside at the rental unit. Accordingly, I found the tenants' requests for orders for compliance to be moot and the only outstanding issue to determine is the tenants' entitlement to monetary compensation.

Where a respondent does not appear for a hearing, the applicant bears the burden to prove that each respondent was served with notification of the proceeding in a manner that complies with the Act. Since there was no appearance on part of the landlords, I explored service of the proceeding package and evidence upon the landlords.

The tenant testified that she sent a hearing package to each landlord via registered mail on February 4, 2019; an evidence package was sent to each landlord by registered mail on February 22, 2019; and, additional photographs were sent to the landlord on a digital device on March 6, 2019 via registered mail. The tenants stated that the landlords personally served them with their response on March 5, 2019, in person.

As proof of service of the hearing packages, the tenant stated that she no longer had the Canada Post receipts but that she had uploaded a photograph of the envelopes mailed to the landlords on February 4, 2019. Upon review of the photographs, I noted that the envelopes have postage stamps and were stamped with a Canada Post date stamp denoting a mailing date of February 4, 2019; however, there was no indication these envelopes were sent by registered mail. Envelopes sent via registered mail have

labels denoting registered mail and include tracking numbers and I was unsatisfied that the tenants used registered mail to send the hearing package (which includes the tenants' Application for Dispute Resolution) to the landlords on February 4, 2019.

Section 89(1) of the Act provides that an Application for Dispute Resolution that pertains to a monetary claim must be served upon a respondent either: in person or by registered mail or as ordered by the Director. Registered mail is any service provided by Canada Post for which a signature of the recipient is required.

Evidence for a dispute resolution proceeding may be served by regular mail, or any other method that complies with section 88 of the Act; however, an Application for Dispute Resolution has special service requirements under section 89. Accordingly, it is insufficient to use regular mail to serve an Application for Dispute Resolution.

I note that the photographs of the envelopes used to send evidence on February 22, 2019 indicates it was sent using "regular or standard" delivery although a tracking number is provided on the label affixed by Canada Post. A search of the tracking number shows that the evidence package was delivered on February 25, 2019.

Although the landlords did provide a response to the tenants and to the Residential Tenancy Branch, I find it is unclear to me as to whether the landlords were responding to the tenant's Application for Dispute Resolution, or the tenant's evidence package, or both, and in the absence of the landlords at the hearing I am unable to confirm that with them. Due to this uncertainty, I decline to deem the landlords sufficiently served and I find it appropriate in these circumstances to dismiss the tenants' monetary claims against the landlords with leave to reapply.

The statutory time limit for making an Application for Dispute Resolution is within two years of the tenancy ending.

Conclusion

The tenants did not prove they sent their Applications for Dispute Resolution to the landlords via registered mail, or in another manner that complies with section 89(1) of the Act, and I am not certain the landlords' received their Application for Dispute Resolution. Therefore, I have dismissed the Tenant's Application for Dispute Resolution 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: March 14, 2019

Residential Tenancy Branch