



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 December 29, 2018 (the “Application”). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

The Tenant had filed an amendment changing the spelling of the Landlord’s name.

The Tenant and his agent appeared at the hearing. The Landlord did not appear at the hearing. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Agent provided the correct legal name of the Landlord and this is reflected in the style of cause.

The Agent confirmed the Tenant is seeking double the security deposit if I find the Landlord breached the *Residential Tenancy Act* (the “Act”).

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

The Agent testified that the hearing package and evidence were sent by registered mail to the rental unit address on January 03, 2019. The Agent testified that the Landlord had told them that he lived at the rental unit address in the upper suite. The Agent testified that the package included Tracking Number 1 as noted on the front page of this decision. The Agent testified that the package was returned indicating the recipient had moved and the package was refused.

The Agent testified that she then looked up the land title document for the rental unit address and it named the Landlord as the owner. She testified that she sent a second package on January 24, 2019 by registered mail to the mailing address for the Landlord on the land title document. She testified that the Landlord had previously said he used to live in the city noted on the land title document. The Agent testified that the package included Tracking Number 2 as noted on the front page of this decision. The Agent testified that the package was returned indicating it was unclaimed.

The Agent testified that she was in contact with the city about the rental unit and Landlord. She said the by-law officer told her they went to the rental unit address several times to speak to the Landlord without success.

The Agent acknowledged that she does not know if the mailing address listed on the land title document is the Landlord's residence.

I looked Tracking Number 1 and 2 up on the Canada Post website which shows both packages were refused by the recipient.

The Agent confirmed that the Tenant had never moved into the rental unit.

Section 89(1) of the *Act* requires the following in relation to service of the hearing package:

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:

...

(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...

The Tenant, as applicant, has the onus to prove service pursuant to rule 3.5 of the Rules of Procedure.

The Tenant did not submit any evidence of service. There is no evidence before me of the Canada Post Customer Receipts, photos of the returned packages or the land title document described.

I am not satisfied that the rental unit address is the Landlord's residence or place of business given the following. The Agent originally believed this was the Landlord's residence based on the Landlord stating as such previously. The Tenant never lived at the rental unit such that he can confirm the Landlord resided in the upper unit. The Tenant has not submitted any documentary evidence showing the rental unit address is the Landlord's residence or place of business. The package sent to the rental unit was returned indicating the recipient had moved. The Agent provided evidence that the city by-law officers were unable to contact the Landlord at the rental unit address. There is no documentary evidence before me in support of service.

Nor am I satisfied that the second address used is the Landlord's residence or place of business given the following. The address was obtained from a land title document which states that it is the Landlord's "mailing address". I do not accept that a mailing address is necessarily a person's residence or place of business. There is no evidence before me that the address used is the Landlord's residence or place of business. The Agent acknowledged that she did not know if the address was the Landlord's residence. There is no evidence that the Landlord ever lived at this address, only that the Landlord said he used to live in the city noted in the address. The package was not claimed. There is no documentary evidence before me in support of service.

In the circumstances, I am not satisfied that the hearing package was served on the Landlord in accordance with section 89(1) of the *Act*. There is no evidence before me that the Landlord received the package such that it can be deemed sufficiently served pursuant to section 71 of the *Act*.

Given I am not satisfied of service, I 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: April 23, 2019

Residential Tenancy Branch