



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$35,000.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords were represented by counsel and the tenants were represented by an agent.

Preliminary Issue – Service

At the outset of the hearing, counsel for the landlords stated that the landlords had not been served with the tenants' application for dispute resolution materials or supporting evidence (the "**Materials**"), and were therefore not able to adequately prepare for this hearing. He stated that the landlords found out about this hearing from a reminder notice sent to them by the Residential Tenancy Branch.

The landlords asked that the tenant's application be dismissed with leave to reapply.

The tenants' agent stated that the Materials were sent in two packages by registered mail to an address in Ontario that was listed by the landlords on a Two Month Notice to End Tenancy dated July 30, 2017 that was entered into evidence by the tenants (the "**Ontario Address**"). The tenants' agent stated that one of the registered mail packages was returned to the tenants. He stated that he did not know what happened to the other package.

Counsel for the landlords stated that the landlords no longer lived at the address listed on the Two Month Notice. He argued that, as such, the Materials cannot be considered to have been properly served, per section 89 of the Act, which states:

Special rules for certain documents

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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*].

He noted that, to his knowledge, the tenants had not obtained an order for substituted service pursuant to section 71 of the Act which would allow the tenants to serve the Materials in a manner other than what is set out at section 89 of the Act. The tenants' agent did not contradict this.

I find that the Materials were not served in accordance with the Act. Section 89 permits an application for dispute resolution to be sent by registered mail to an address where the opposing party *resides*. Based on the submissions of the landlords' counsel, I find that the landlords do not reside at the Ontario Address. As such, they cannot be considered to have received the Materials.

As the landlords have not had an opportunity to review the Materials or to submit evidence that is responsive to those Materials, I find that they would be unfairly prejudiced if the hearing were to proceed today.

As such, I dismiss the tenants' application with leave to reapply. I make no findings on the merits of the matter. Leave to reapply does not extend any applicable limitation period.

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: April 23, 2019

Residential Tenancy Branch