



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Tenant stated that:

- the person named as a Respondent on this Application for Dispute Resolution is the owner of the rental unit;
- her tenancy agreement names a company as the landlord;
- the tenancy agreement provides a mailing address for the company named as the landlord;
- she delivered the Application for Dispute Resolution to the office where the Respondent works as a medical practitioner;
- a person working at the Respondent's business office signed to acknowledge receipt of the Application for Dispute Resolution;
- she has never attended the Respondent's business office in relation to her tenancy; and
- she does not know whether the Respondent conducts business as a landlord out of his medical office.

Analysis:

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to landlords is to notify them that a dispute resolution proceeding has been initiated and

to give them the opportunity to respond to the claims being made by the tenant. When a tenant files an Application for Dispute Resolution in which the tenant applies for a monetary Order, the tenant has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that an Application for Dispute Resolution 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*].

Based on the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Respondent was not personally served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(a) of the *Act*.

Based on the testimony of the Tenant and in the absence of evidence to the contrary, I find that an agent for the Landlord was not personally served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(b) of the *Act*.

Based on the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Application for Dispute Resolution and the Notice of Hearing were not mailed to the Respondent's home address or the address at which he conducts business as a landlord. I therefore find that these documents were not served pursuant to section 89(1)(c) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the female Tenant in an alternate manner, therefore I find that she was not served in accordance with section 89(1)(e) of the *Act*.

While I accept that the documents were personally delivered to the office where the Respondent conducts business as a medical practitioner, the Tenant submitted insufficient evidence to establish that these documents were received by the Respondent. I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Tenant has failed to establish that the Application for Dispute Resolution has not been served to the Respondent in accordance with the *Act*, I dismiss her Application, with leave to reapply. The Tenant retains the right to file another Application for Dispute Resolution in regards to this matter.

To provide some clarity to the Tenant in regards to this matter, the Tenant has the right to:

- personally serve the Application for Dispute Resolution to any individual she believes was her landlord, with the understanding she will need to establish that the individual was her landlord at future proceedings;
- personally serve the Application for Dispute Resolution to any individual acting as an agent for her landlord;
- personally serve the Application for Dispute Resolution to any individual acting as an agent for the company named as a landlord on her tenancy agreement; and
- send the Application for Dispute Resolution, by registered mail, to the business address of the company named as a landlord on her tenancy agreement.

Conclusion:

The Tenant's Application for Dispute Resolution is dismissed, 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: May 03, 2019

Residential Tenancy Branch