



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FFT

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 11:19 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue - Service of the Application for Dispute Resolution

The tenant testified during the hearing that he served the landlord the application for dispute resolution by way of regular mail. The tenant was at the post office during the conference call, and attempted to obtain proof of service of his application.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution.

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:

- (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;...*

Residential Tenancy Branch Guideline #12 discusses the service requirements for service of Applications for Dispute Resolution. The definition of “Registered Mail” under RTB Guideline #12 is “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available”.

The tenant was unable to provide confirmation of delivery of his application to the landlord. As the tenant’s application has not been served to the landlord in a method required under section 89(1) of the *Act*, I dismiss the tenant’s application for the requested order with leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the tenant’s application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee for this application.

Conclusion

The tenant’s application to recover the filing fee is dismissed without leave to reapply. The remaining portion of the tenant’s application 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 23, 2019