



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY AND PROPERTY
MAGT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for unpaid rent, authority to retain the tenant's security deposit, and for recovery of their filing fee paid for this application.

The landlord's agents attended; the tenant did not attend the telephone conference call hearing.

In response to my inquiry, the landlord's agents said they used the address the tenant supplied in his application for tenancy, prior to the start of the tenancy, to serve him their application for dispute resolution and notice of hearing package.

The landlord further submitted that they also provided their application for dispute resolution and notice of hearing package to the tenant via email.

The landlord supplied a copy of the registered mail receipt and tracking number, which shows that the registered mail was returned to the landlord.

Analysis and Conclusion

Section 89(1) of the Act indicates the ways in which an application for dispute resolution must be given, such as in the case of the landlord's claim for a monetary order:

- (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*].

In the case before me, I find that the landlord failed to provide sufficient evidence that the address they used to serve the tenant with their application for dispute resolution was a current address for the tenant. The landlord also did not have a forwarding address for the tenant.

I therefore find the landlord submitted insufficient evidence that they served the tenant their application for dispute resolution and notice of this hearing in a manner required by the Act.

Both parties have a right to a fair hearing and the tenant would not be aware of the hearing without having been served the Notice of a Dispute Resolution Hearing and application as required by the Act.

I therefore dismiss the landlord's application, *with leave to reapply*.

Leave to reapply does not extend any applicable time limitation deadlines.

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: July 19, 2019

Residential Tenancy Branch