



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both the landlord and the tenant attended the hearing. The landlord testified he was not served with tenant's Notice of Dispute Resolution, Residential Tenancies Fact Sheet, Respondent Instructions for Dispute Resolution or any evidence from the tenant. The tenant testified he sent it by registered mail to the landlord and provided a copy of receipt from Canada Post to prove it.

Preliminary Issue – Service of Notice of Hearing/Application for Dispute Resolution Proceedings

The tenant did not have any documents with him during the hearing to refer to. The tenant testified that he uploaded proof of service with a photograph of his receipt from Canada Post, but was unable to advise me of the date of purchase of the registered mail or the specific address to where he sent the Notice of Hearing.

I note that in the tenant's evidence package is a photograph of a receipt in the amount of \$1.05 dated February 26, 2019 for a stamp he purchased. There is no reference to a registered mail tracking number on the receipt. I note that the tenant filed for Dispute Resolution on March 14, 2019, sixteen days after purchasing the stamp.

The landlord testified he only knew about the scheduled hearing because he was sent an email by the Residential Tenancy Branch advising him of it. He contacted the

Residential Tenancy Branch and was able to verify there was indeed an application filed and was able to ascertain the tenant's forwarding address through discussion with an information officer. He advises he has since filed an application for dispute resolution against the tenant for monetary compensation to be heard in September.

Analysis

Section 89 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;*
- e. as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure provide that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.

The tenant's documentary evidence before me is that he purchased a stamp from Canada Post on February 26th. Although he testified that he sent the application for dispute resolution by registered mail, he was unable to provide me with a tracking number to verify the mailing, either orally or in documentary form. The landlord was consistent in his testimony that he did not receive the tenant's application for dispute resolution and related documents. As there is no evidence to support it, I am not satisfied the tenant has properly demonstrated he has complied with section 89 of the *Act* and served the landlord with the application for dispute resolution. Consequently, I dismiss the tenant's application without leave to reapply.

As the tenant was not successful in his claim, he will not recover the filing fee.

Conclusion

The tenant's application is dismissed.

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 02, 2019

Residential Tenancy Branch