



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant’s security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The male landlord and tenant did not attend this hearing, which lasted approximately 11 minutes. The female landlord (“landlord”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the male landlord at this hearing.

Preliminary Issue – Service of the Landlords’ Application

The landlord testified that the tenant was served with a copy of the landlords’ application for dispute resolution hearing package on April 26, 2019, by way of registered mail to the tenant’s forwarding address. The landlord initially indicated that it was sent on April 30, 2019, but then claimed it was not correct.

The landlords provided a Canada Post receipt and tracking number with this application. The landlord confirmed the tracking number verbally during the hearing. The landlord was looking through her emails online and her paperwork during the hearing in order to find the date and Canada Post tracking number.

During the hearing, I informed the landlord that I looked up the tracking number on the Canada Post website and it indicated that the mail was sent on April 25, 2019.

The landlord said that she sent the mail to the forwarding address provided by the tenant in the move-out condition inspection report. She said that she did not provide a copy of this report for the hearing.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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 documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report.***

I find that the landlords did not serve the tenant with their application in accordance with section 89(1) of the *Act*. The landlords provided no documentary proof that the tenant gave them an address which was a forwarding or residential address.

The landlords did not provide a copy of the move-out condition inspection report, which the landlord said contained the tenant's forwarding address. The landlord provided the incorrect date of April 26, when the Canada Post website indicated April 25, 2019. The tenant did not appear at this hearing to confirm receipt of the application.

I notified the landlord that the landlords' application was dismissed with leave to reapply, except for the filing fee. I informed her that the landlords would be required to file a new application, pay another filing fee and provide proof of service at the next hearing, if they choose to pursue this matter further.

Conclusion

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlords' 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: August 01, 2019

Residential Tenancy Branch