



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on May 01, 2019. The Applicant applied for return of double the security deposit and reimbursement for the filing fee.

The Applicant appeared at the hearing. Nobody appeared at the hearing for the Respondent. I explained the hearing process to the Applicant who did not have questions when asked. The Applicant provided affirmed testimony.

The Applicant had submitted evidence prior to the hearing. The Respondent had not submitted evidence. I addressed service of the hearing package and evidence.

The Applicant testified that the hearing package and evidence were sent to the rental unit by registered mail on May 09, 2019. She had submitted an amended Monetary Order Worksheet and testified that this was sent to the Respondent along with the hearing package and other evidence through regular mail on May 10, 2019. The Applicant had submitted a customer receipt with Tracking Number 1 on it. I looked this up on the Canada Post website which shows the package has been “on hold at a secure facility” since May 21, 2019.

The Applicant testified that she sent the hearing package and evidence to the rental unit because the Respondent lived there during the tenancy and when she moved out. She testified that the rental unit is a two-bedroom condo. The Applicant testified that the Respondent lived in one of the bedrooms and she rented the second bedroom. The Applicant testified that she shared a kitchen with the Respondent and that the Respondent owned the rental unit.

Based on the undisputed testimony of the Applicant, customer receipt and Canada Post website information, I accept that the Applicant sent the hearing package and evidence, other than the amended Monetary Order Worksheet, to the Respondent at the rental unit by registered mail on May 09, 2019. The Respondent would usually be deemed to have received these pursuant to section 90 of the *Act*. However, I find the deeming provision in section 90 of the *Act* is rebutted given the comments on the Canada Post website showing the package has been on hold since May 21, 2019. The Canada Post website information seems to show that Canada Post never attempted to deliver the package to the Respondent and never left notice cards for the Respondent about the package.

I have no evidence before me that the Respondent received the package. The Canada Post website information does not support that the Respondent received the package. The Respondent did not appear at the hearing. The Respondent did not submit evidence for the hearing. The Applicant did not submit evidence showing the Respondent received the package such as correspondence acknowledging receipt.

I acknowledge that the Applicant re-sent the package with the amended Monetary Order Worksheet. However, service by regular mail is not sufficient in relation to the hearing package pursuant to section 89(1) of the *Act*.

I am not satisfied of service and therefore the Application is dismissed.

The Application would usually be dismissed with leave to re-apply. However, section 4 of the *Act* states:

4 This Act does not apply to...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

Here, the Applicant did share kitchen facilities with the Respondent who was the owner of the rental unit. Therefore, the *Act* does not apply and the RTB has no jurisdiction to decide this matter. In these circumstances, I dismiss the Application without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 06, 2019

Residential Tenancy Branch