



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL MNRL

Introduction and Preliminary Matters

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (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 from the tenants.

The landlord attended; the tenants did not attend the telephone conference call hearing.

Prior to the hearing, the landlord applied for an order for substituted service to serve the tenants his Application for Dispute Resolution and hearing documents in a manner different than what is required under section 89 of the Act.

The landlord requested to serve the tenants his application and hearing package by registered mail to the tenants' last known address, which in this case was the address of the rental unit and by email to the email of tenant TM. The landlord confirmed that the tenants had not provided their forwarding address and that they vacated the rental unit on May 31, 2019.

In a Decision of October 4, 2019, an adjudicator issued a decision dismissing the landlord's application for substituted service.

In this case, as the tenants were not in attendance, I addressed the service of the application and hearing documents with the landlord.

In response to my inquiry, the landlord said that the tenants were served by personal service. I asked the date and the landlord hesitated for several minutes while he looked for documents. The landlord said he hired a service person to serve the tenants.

The landlord eventually provided the name of a person; however, that person was not in attendance. I asked if the service person signed an affidavit and the landlord said that he had not.

Thereafter, the landlord said he served the tenants with his application and hearing documents by registered mail, and verbally provided the Canada Post registered mail tracking numbers. The landlord said he used the tenants' last known address, which was the rental unit address the tenants abandoned on May 31, 2019.

When asked, the landlord said the tenants signed for the registered mail. He further said they must have collected the mail as it was not returned to him.

During the hearing, I then checked the tracking numbers provided by the landlord, and the Canada Post website indicates that each of the envelopes were uncollected and returned to the sender on November 21, 2019.

Analysis and Conclusion

Section 89(1) of the Act requires that the application for dispute resolution, which includes the notice of hearing, must be given, by personally handing the documents to the tenant or by registered mail to the tenant's address where they reside or to their forwarding address.

The Residential Tenancy Branch Rules of Procedure 3.5 states that at the hearing, the applicant must be prepared to demonstrate service to the satisfaction of the arbitrator.

In the case before me, I find that the landlord submitted insufficient evidence to show that the tenants were served by personal service. The landlord failed to have the service person attend the hearing or provide an affidavit.

Additionally, the landlord confirmed that the registered mail was sent to the tenants' last known address, not the address where they reside or to their forwarding address, after confirming the tenants did not provide a forwarding address.

I therefore find the landlord submitted insufficient evidence that he served the tenants his 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 tenants 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: December 13, 2019

Residential Tenancy Branch