



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with an adjourned ex-parte application by the tenant under the *Residential Tenancy Act* (the Act) for:

- an order for the landlord to return the security deposit, pursuant to sections 38 and 38.1 of the Act;
- an order requiring the landlord to reimburse the filing fee, pursuant to section 72 of the Act.

The tenant (applicant) attended the hearing and was given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord (respondent) did not attend, although I waited until 1:42 P.M. to enable him to connect with this teleconference hearing scheduled for 1:30 P.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only persons who had called into this teleconference.

The tenant affirmed he sent the application, the interim decision and the evidence (the materials) by registered mail to the landlord on April 16, 2020 (the tracking number is on the cover page of this decision).

The tenancy agreement submitted into evidence does not indicate the landlord's address for service.

The proof of service of the forwarding address form (RTB41) signed by the tenant, states the landlord's address (where the forwarding address was served) is the address of the rental unit.

The witnessed proof of service of the tenant's notice of direct request (RTB50) states the landlord's address (address where the notice of direct request proceeding documents were served) is the address of the rental unit.

The tenant did not specify to which address he sent the registered mail package.

Section 89 of the Act states:

(1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 Branch Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

In light of the two forms indicating the address which the landlord was served as the rental unit, I am not satisfied the tenant served the materials to the address at which the landlord carries on business as a landlord.

Thus, I find the landlord (respondent) was not served in accordance with section 89 of the Act.

As such, I dismiss the tenant's application for an order for the landlord to return the security deposit with leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenant's application for an order for the landlord to return the security deposit with leave to reapply.

I dismiss the tenant's application to recover the filing fee without 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: June 15, 2020

Residential Tenancy Branch