



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landmark Lord Street Holdings (G.P.) Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This matter, reconvened from an ex parte Direct Request Proceeding, dealt with an Application for Dispute Resolution pursuant to the *Residential Tenancy Act* (the “Act”) by the tenant for a Monetary Order for the return of the security deposit pursuant to section 38 and to recover their filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant was represented by their agent (the “tenant”) who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was served in person with the Interim Decision of November 30, 2020 and Notice of Reconvened Hearing. Despite having filed a valid Canada Post tracking receipt into evidence the tenant repeatedly testified that the landlord was not served by registered mail but personally by the Applicant in the presence of witnesses. No signed Proof of Service form was submitted into evidence.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Analysis

In the Interim Decision of November 30, 2020 the adjudicator writes:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the landlord within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Section 89(1) 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]...*

I find insufficient evidence to support the tenant's position that the landlord has been duly served with the Notice of Hearing or Application for Dispute Resolution. The tenant's testimony that the landlord was served personally is not supported in any of the documentary materials.

While a Canada Post tracking receipt was submitted into evidence, the tenant testified when questioned that the landlord was not served by registered mail. The tenant did not explain why a tracking receipt was submitted into evidence if not to support service on the landlord. Given the tenant's repeated, unwavering testimony in response to direct questions, that the landlord was not served by registered mail I accept the evidence that the tenant did not serve the landlord by that method.

Based on the evidence I am not satisfied that the landlord was served with the tenant's materials in accordance with the *Act* or at all.

Consequently, I dismiss the tenant's application with leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: March 16, 2021

Residential Tenancy Branch