



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 19, 2021 (the “Application”). The Tenant applied for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property.

The Tenant appeared at the hearing. The Landlord did not appear at the hearing. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

Preliminary Issue – Service

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant's evidence.

The Tenant testified that the hearing package was sent to the Landlord by regular mail on March 29, 2021. The Tenant had submitted a receipt for the mail. The receipt does not have a tracking number on it as would a receipt for registered mail. The Tenant could not provide a tracking number for the package. Upon further discussion, the Tenant confirmed the package was sent by regular mail and not registered mail.

As explained to the Tenant at the hearing, the hearing package had to be served in accordance with section 89(1) of the *Act* which states:

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];
- (f) by any other means of service provided for in the regulations.

The term "registered mail" is defined in section 1 of the *Act* as follows:

"registered mail" includes any method of mail delivery provided by Canada Post **for which confirmation of delivery to a named person is available** (emphasis added)

Sending the hearing package by regular mail rather than registered mail is not permitted under section 89(1) of the *Act*. Therefore, the deeming provisions in section 90 of the *Act* do not apply and the Landlord is not deemed to have received the hearing package. The Landlord did not attend the hearing which would have satisfied me that the Landlord received the hearing package. The Landlord did not submit evidence for the hearing which likely would have satisfied me that the Landlord received the hearing package. There is no evidence before me showing that the Landlord received the hearing package, such as correspondence from the Landlord acknowledging receipt.

In the circumstances, I was not satisfied the Tenant served the Landlord in accordance with section 89(1) of the *Act* as required and was not satisfied the Landlord received the hearing package. Given this, the Application was dismissed **with leave to re-apply**. **The Tenant can re-apply**; however, the Tenant will be required to serve the Landlord with the new hearing package in accordance with the *Act*. Further, this decision does not extend any time limits set out in the *Act*.

Conclusion

The Application is dismissed **with leave to re-apply**. This decision does not extend any time limits set out in the *Act*.

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 20, 2021

Residential Tenancy Branch