



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR**

Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the "Act") for a monetary award for the return of the security deposit for this tenancy.

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 attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they did not serve the landlord with the Interim Decision of September 14, 2021 and Notice of Reconvened Hearing.

At the outset of the hearing the tenant amended a typographic error in the spelling of their name on the application. The corrected name is used in the style of cause for this decision.

Issue(s) to be Decided

Is the tenant entitled to the relief sought?

Analysis

Section 89(1) of the *Act* establishes the following rules for service of certain documents, which include an Notice of Reconvened Hearing:

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]...*

The Interim Decision of November 14, 2021 states, in bold:

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.

The tenant stated that they have not served the Notice of Reconvened Hearing or the interim decision on the landlord.

A party must be served with a Notice of Hearing. In the present case while I accept the undisputed evidence of the tenant that they have served the landlord with their forwarding address, all evidence and notice of Direct Request proceeding, they gave unequivocal evidence that they have not served the landlord with notice of the present hearing.

Therefore, I find that the application was not served on the landlord as required under the *Act* and I dismiss the tenant's application in its entirety with leave to reapply.

Conclusion

The tenant's application is dismissed 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 14, 2022

Residential Tenancy Branch