Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord January 11, 2022 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Landlord appeared at the hearing with X.H. to assist. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlord and X.H. provided affirmed testimony.

Service

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

The Landlord and X.H. testified that the hearing package and Landlord's evidence were sent to the Tenant at the Tenant's work address obtained during the tenancy. The Landlord and X.H. testified that the package was sent by registered mail and provided Tracking Number 830. I looked Tracking Number 830 up on the Canada Post website which shows the package was delivered to someone with the initials J.N., which are not the Tenant's initials. I asked the Landlord and X.H. if they know who J.N. is and they did not.

I heard the Landlord and X.H. on the Application; however, my decision is based on the service issue.

The hearing package for the Application had to be served on the Tenant 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) …
> >
> > (c) by sending a copy by registered mail to the address at which the person resides…
> >
> > (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)…
> >
> > (f) by any other means of service provided for in the regulations.

Section 89(1) of the *Act* does not allow for service to someone's work or office. Although the Canada Post website shows someone with the initials J.N. signed for the package, there is no evidence before me that the package was delivered to the Tenant. I do not know based on the evidence provided what J.N. did with the package and I do not find it reasonable to assume J.N. gave the package to the Tenant. In the circumstances, I find the hearing package was not served on the Tenant in accordance with section 89(1) of the *Act* and I am not satisfied it was sufficiently served on the Tenant such that I can apply section 71(2) of the *Act.* For me to apply section 71(2) of the *Act*, I find it necessary to have some evidence before me that the Tenant in fact received the package. The Tenant did not appear at the hearing, the Tenant did not submit evidence for the hearing and the Canada Post website shows the package was given to someone other than the Tenant. In the circumstances, there is no compelling evidence before me that the Tenant in fact received the package.

Given I am not satisfied of service of the hearing package, I dismiss the Application with leave to re-apply, other than in relation to the request for the filing fee which is dismissed without leave to re-apply. This decision does not extend any time limits set out in the *Act*.

<u>Conclusion</u>

The Application is dismissed with leave to re-apply, other than in relation to the request for the filing fee which is dismissed without 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 22, 2022

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Residential Tenancy Branch