



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity to be heard, to present evidence and to make submissions.

The Tenant states that the first they heard of this hearing was in a reminder email from the Residential Tenancy Branch (the “RTB”). The Tenant states that they did not receive any registered mail or notice of registered mail. The Tenant states that they provided their forwarding address to the Landlord on February 2, 2022. The Landlord states that they cannot recall when the forwarding address was received. The Landlord states that they send the application, notice of hearing and evidence (the “Hearing Package”) to the Tenant’s forwarding address by registered mail on March 23, 2022. The Landlord confirms that the postal tracking for the registered mail was unclaimed. The Landlord cannot recall when they received the forwarding address. The Landlord did not provide a copy of the registered mail envelope.

Section 89(1) of the Act provides that 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*];
- (f) by any other means of service provided for in the regulations.

Section 90(a) of the Act provides that a document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received, if given or served by mail, on the fifth day after it is mailed. Deemed service is rebuttable. Given the lack of supporting evidence of where the Hearing Package was sent by registered mail and given the Tenant's evidence that no registered mail was received, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant was served as required. The application is therefore dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: November 14, 2022

Residential Tenancy Branch