

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction / Background / Evidence

This hearing was convened in response to the landlord's application for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord attended the hearing and gave affirmed testimony.

The landlord undertook to serve the tenant with the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail. The address used by the landlord for mailing the hearing package is the "General Delivery" address shown on the tenant's driver's licence; a copy of the driver's licence was made at the time when the tenancy was entered into at the start of May 2011. The tenant is thought to have vacated the unit before the end of the fixed term tenancy, on or about September 10, 2011, without providing a forwarding address.

The landlord's evidence includes the Canada Post tracking number for the registered mail. The Canada Post website informs that the package was "successfully delivered" on November 15, 2011, however, the name of the person who signed for receipt is not the tenant. The landlord considers that the signatory is the tenant's brother.

Section 88 of the Act speaks to **How to give or serve documents generally**. Section 89 of the Act addresses **Special rules for certain documents**, and provides in part:

89(1) 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*].

Based on the documentary evidence and the affirmed testimony of the landlord, I find that the hearing package has not been served in compliance with the above statutory provisions. In the result, the application must be dismissed but with leave to reapply.

Further to the above, section 71 of the Act speaks to **Director's orders: delivery and service of documents**, and provides as follows:

71(1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Conclusion

The landlord's application is hereby 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*.

DATE: November 24, 2011

Residential Tenancy Branch

