



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 2, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for other reasons; and to recover the cost of the filing fee; however, no filing fee was paid by the Landlord.

Issue(s) to be Decided

Has the Landlord proven that the Tenant was sufficiently served Notice of this proceeding?

Background and Evidence

At the outset of the proceeding the Landlord affirmed that he sent the Tenant the hearing documents by registered mail to the address provided to him by the Tenant.

The Landlord included a Canada Post receipt in his evidence that was dated August 6, 2013 along with the tracking receipt which displays a different city name and a different postal code than the address written on the application. I explained to the Landlord that this receipt was not evidence that the hearing documents were sent because the application was not filed until two months later on October 15, 2013, and the hearing documents were not created until October 16, 2013.

The Landlord provided a second tracking number, and upon review of that number on the Canada Post website it was determined that this package was sent May 10, 2013, again, prior to this application being filed.

The Landlord became upset with my questioning about service of documents, at which time I requested that he not continue to yell at me. He stated that the Tenant moved back to Japan and later changed his testimony to say he thinks so but he does not know for certain. He became angry with me when trying to understand my explanation about the process of service of documents.

The Landlord provided a third Canada Post tracking number which was sent October 18, 2013 and matches the time frame of this hearing package. The Landlord testified that this package was returned to him as noted on the Canada Post website.

Analysis

Section 89(1) of the Act stipulates 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*].

Section 90 of the Act provides that a document served by registered mail is deemed received on the fifth day after it is mailed. However, this is a rebuttable presumption. When there is clear evidence that a document has not been received, the presumption has been rebutted.

In the absence of the respondent Tenant, the burden of proof of service of the hearing documents lies with the applicant Landlord. The Landlord provided contradictory testimony through out this proceeding. He provided two registered mail tracking numbers that were issued months prior to the creation of these hearing documents. Then he provided testimony that the Tenant has or may have moved out of the country before providing a third registered mail tracking number. The third tracking number pertains to a package that was sent and received by the Landlord, not the Tenant.

Therefore, I find there to be insufficient evidence to prove the Tenant was served with Notice of this proceeding. To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights.

As I have found the service of documents not to have been effected in accordance with the Act, I dismiss the Landlord's claim, with leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's claim, with leave to reapply.

Dated: January 16, 2014

Residential Tenancy Branch

