



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXIMUM INCOME PROPERTY MANAGEMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL – S, FFL

Introduction

This hearing was set for 1:30 p.m. on November 9, 2018 to deal with a landlord's application for a Monetary Order for unpaid rent and authorization to retain the security deposit. The landlord's agent appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant was not in attendance, I explored service of hearing documents upon the tenant.

The landlord submitted that the hearing documents were sent to the tenant via registered mail on June 15, 2018. The landlord had provided a copy of the registered mail receipt, including the tracking number, as proof of service. The registered mail receipt indicates the registered mail was sent to the rental unit address.

The landlord originally testified that tenant vacated the rental unit at the end of June 2018. I noted that included in the landlord's evidence was a copy of the move-out inspection report that indicates that the "move-out date" was June 1, 2018; the move-out inspection report was completed on June 1, 2018 and the tenant provided a forwarding address on the move-out inspection report. The tenant's forwarding address is located in a town different than that of the rental unit. The landlord conceded that he was mistaken and that it appears the tenant moved out on June 1, 2018.

A search of the registered mail tracking number on the Canada Post website confirmed that the registered mail was sent to a location that is not consistent with the tenant's forwarding address and the registered mail was returned to sender as it was not delivered or picked up by the tenant.

Where a party makes a monetary claim, the hearing documents must be sent to the other party in accordance with section 89(1) of the Act. Section 89(1) provides as follows:

- 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*].

[Reproduced as written with my emphasis underlined]

In sending the registered mail to the tenant on June 15, 2018 the landlord should have used the tenant's forwarding address in order to comply with section 89(1) since the tenant was no longer residing at the rental unit address at the time of mailing. As such, I find the landlord did not sufficiently serve the tenant with notification of this proceeding in a manner that complies with section 89(1) of the Act and I dismiss the landlord's application with leave to reapply.

I make no order for the landlord to refund the security deposit to the tenant as the landlord may have obtained the tenant's consent to retain the security deposit after the move-out inspection report was completed; however, I make no such finding of fact or law by way of this decision since the tenant has not been duly served with the hearing document and evidence for this proceeding. Rather, I encourage the parties to try to resolve the issue of unpaid rent and the security deposit between themselves if possible

and if they are unsuccessful they may seek remedy by filing an Application for Dispute Resolution. I cautioned the landlord during the hearing that the double security deposit provision of section 38 may apply.

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: November 14, 2018

Residential Tenancy Branch