



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issue - Service of Application for Dispute Resolution

At the hearing, the landlord's Agent DM testified that a copy of the landlord's dispute resolution hearing package was sent to both tenants by registered mail. The landlord did not have either the date these packages were sent to the tenants or Canada Post Tracking Numbers to confirm these registered mailings.

Tenant NJ (the tenant) said that they only learned of this hearing by way of an email from the Residential Tenancy Branch, shortly before this hearing. The tenant testified that neither he nor the other tenant received copies of the landlords' dispute resolution hearing package by registered mail as declared by the landlord.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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) 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 document]...*

The tenant has rebutted the landlord's sworn testimony that the landlord's dispute resolution hearing packages were served in a manner required by section 89(1) of the *Act*. The landlord provided no details to confirm that these packages were served to the tenants in accordance with section 89(1). As I am not satisfied that the landlord has demonstrated that the tenants were properly served with copies of the landlord's application for dispute resolution, I dismiss this application with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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 13, 2018

Residential Tenancy Branch