



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by regular mail and the landlord said she never received it and did not know about the hearing until the Residential Tenancy Branch emailed her about the hearing being rescheduled to today. The landlord also said she did not see an email from the tenant with their new address. I find the documents were not served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenants apply pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to refund the security deposit pursuant to section 38; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Have the documents been legally served? If so, has the tenant proved on the balance of probabilities that they are entitled to double their security deposit and to recover their filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It was undisputed that the tenancy began May 5, 2017, rent was \$1700 a month and a security deposit was paid of \$850. The tenant said after they vacated on June 9, 2018 and provided a forwarding address by email on June 10, 2018. The landlord said the tenant damaged the unit and she never saw their forwarding address. She did not receive their Application either.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

The *Residential Tenancy Act* in sections 88 and 89 sets out the legal methods of service for residential tenancies. As explained to the tenant in the hearing, email may be an acceptable means of service for other situations but the Act deals specifically with acceptable methods of service for landlords and tenants and this would over ride general case law. I find email is not a legal method of service under the Act. The methods permitted for service of documents generally are set out in sections 88 and 89 of the Act. The Residential Policy Guidelines discuss these in Guideline 12 but I find email is not an included legal method of service. Therefore I find the tenants did not serve their forwarding address in writing to the landlord as required by section 38 of the Act.

Furthermore, I find an Application for Dispute Resolution may be served only in person or by registered mail according to section 89 of the Act. Therefore, I find the tenants did not serve the landlord legally with their Application.

The landlord stated that she had a claim for damages. I advised her that she must file her own Application and serve it with the evidence on the tenants in order to claim compensation for damages. It is possible for staff to schedule both the tenants' and landlord's application to be heard at the same time if they request this.

Conclusion:

I dismiss the application of the tenants for lack of legal service. I give them leave to reapply. There is no recovery of the filing fee due to lack of success.

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