



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* ("Act"), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- authorization to obtain a return of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 13 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of the Tenant's Application

The tenant testified that he served the landlord with a copy of the tenant's application for dispute resolution hearing package on July 18, 2019, by way of regular mail to a residential address that he said the landlord provided to him in an email. The tenant did not provide this email with his application. The tenant stated that he named the landlord as a respondent, as she is in charge of the landlord company that was named in the parties' written tenancy agreement that the tenant provided. The tenant said that he did not name the landlord company as a respondent in this application.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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 documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report.***

I find that the tenant did not serve the landlord with his application in accordance with section 89(1) of the *Act*. The tenant sent the application by regular mail, not registered mail. The tenant provided no documentary proof that the landlord gave him a residential address, after claiming he had an email which he said the landlord sent to him. The tenant did not name the landlord company named in the tenancy agreement, he named an individual landlord that was not named in the agreement. The landlord did not appear at this hearing to confirm receipt of the application.

I notified the tenant that his application was dismissed with leave to reapply, except for the filing fee. I informed him that he would be required to file a new application, pay another filing fee and provide proof of service at the next hearing, if he chooses to pursue this matter further.

I informed the tenant that he could contact information officers at the RTB, who do not provide legal advice, only information, regarding applications. I notified the tenant that he could obtain assistance from a lawyer for legal advice, or a tenant advocacy group

for information, if he required assistance. I also referred the tenant to section 89 of the *Act* regarding service requirements.

Conclusion

The tenant's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the tenant's application is 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*.

Dated: October 24, 2019

Residential Tenancy Branch