



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord's agent, FK attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent confirmed that she was the daughter of the landlord named in this application and that she had authority to speak on his behalf as an agent at this hearing.

Preliminary Issue – Service of the Landlord's Application

The landlord's agent testified that the tenant was served with a copy of the landlord's application for dispute resolution hearing package on February 18 or 20, 2017. The landlord's agent said that she was not sure of the exact date but the above dates were her "best educated guess." When I asked how the above documents were served, the landlord's agent said that it was sent by the landlord by registered mail.

When the landlord located the mail receipt, she claimed that the application was sent to the tenant on February 18, 2017, by registered mail. She provided a Canada Post tracking number verbally during the hearing. I reconfirmed this tracking number with her during the hearing. She said that the application was returned to the landlord.

The landlord's agent testified that the application was sent to a forwarding address provided by the tenant in text messages to the landlord. The landlord's agent pointed to

evidence in the landlord's written evidence package: photographs of a cell phone screen with text messages. The cell phone screen showed a photograph of a business card with the tenant's name on it as an owner of a company. There was no phone number of who sent the text messages or the photograph. There was no print out of the text messages or the photograph. The landlord provided the physical business card in his application package.

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

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].*

Residential Tenancy Policy Guideline 12 states the following, in part, with respect to proof of service:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

...

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

Mail is used, it will generally provide a record of the mail being sent and received, which ordinary mail will not.

...

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 landlord failed to provide sufficient evidence that the tenant was served with the landlord's application at an address at which he was residing or a forwarding address provided by him, in accordance with section 89(1) of the *Act*. The tenant did not attend this hearing. The landlord did not provide sufficient documentary evidence of the tenant's forwarding address; there was a photograph of a cell phone which showed a photo of a business card with the tenant's name. It did not identify any phone number associated with the text message or photograph. Text messages can be altered. Service of application documents to a tenant at a business address is not permitted under section 89 of the *Act*.

The landlord did not provide the receipt for the registered mailing. The landlord did not provide a printed tracking report. The application package was returned to sender. The landlord did not appear at this hearing to confirm that he mailed the documents, as his agent was guessing at many of my questions. When I questioned the landlord's agent as to whether a signature was requested for the registered mail when it was purchased by the landlord, she said that she "assumed" it was.

As the landlord failed to prove service in accordance with section 89(1) of the *Act*, I find that the tenant was not served with the landlord's application. At the hearing, I advised the landlord's agent that I was dismissing the landlord's application with leave to reapply, with the exception of the \$100.00 filing fee which was dismissed without leave to reapply.

I notified her that if the landlord wished to pursue this matter further, he would have to file a new application and pay another filing fee. I cautioned her that service would have to be proven at the next hearing, including clear documentary evidence where possible.

In response to the landlord's agent's complaints, I informed her that information officers are only able to provide information and if the landlord required legal advice, a lawyer could be hired at the landlord's cost. I notified her that the *Act*, *Residential Tenancy Regulation*, Residential Tenancy Branch ("RTB") *Rules of Procedure* and Residential

Tenancy Policy Guidelines could be obtained through the RTB website or in person at a designated RTB location. I also informed her that the “Landlord and Tenant Fact Sheet” as well as the notice of dispute resolution hearing provided comprehensive, though not exhaustive, information regarding service of documents.

Conclusion

The landlord’s application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of the landlord’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: April 13, 2017

Residential Tenancy Branch