



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD (Tenants' Application)
 MNDC, MNR, MNSD, FF (Landlords' Application)

Introduction and Preliminary Matters

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed December 29, 2016 the Tenants sought monetary compensation from the Landlord.

In the Landlords' Application for Dispute Resolution filed on April 25, 2017 the Landlords also sought monetary compensation from the Tenants, authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on May 16, 2017. Only the Landlord, N.B., called into the hearing. She gave affirmed testimony and was provided the opportunity to make submissions to me.

As the Tenants failed to call into the hearing and prove their claim, their Application for Dispute Resolution filed December 29, 2016 is dismissed without leave to reapply.

N.B. testified that she served the Tenants with the Notice of Hearing and the Landlords' Application on April 27, 2017 by registered mail to the rental unit. She confirmed that the Tenants had vacated the rental unit as of January 16, 2017 such that they were not residing in the rental unit when she sent the documents to them by registered mail. She stated that she was informed by her current renters that the Tenants continued to retrieve their mail from the rental unit on occasion, although they have not retrieved the registered mail package sent by the Landlord.

Although it is possible the Tenants attend the rental unit for the purposes of retrieving mail, this is not the address at which they reside; nor is it their "forwarding address" as provided to the Landlord.

Accordingly, I am not satisfied the Tenants have been served in accordance with section 89 of the *Residential Tenancy Act*, which provides as follows:

Special rules for certain documents

- 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*].

[Emphasis added in bold]

As I am not able to find the Tenants were properly served with notice of the Landlords' application, I am unable to proceed in their absence. One of the principles of natural justice is that a party to a dispute has the right to know the claim against them and an opportunity to attend the hearing and make submissions in defense of the claims made. To proceed without adequate notice to the Tenants would offend this principle and would deny the Tenants a fair opportunity to be heard.

Pursuant to *Rules 7.8 and 7.9 of the Rules of Procedure* I **therefore adjourn the Landlords' Application to the date and time set out in the attached Notice of Adjourned hearing.**

Section 71 of the *Residential Tenancy Act* provides me authority to order that documents may be served in a manner which I find necessary. For greater clarity I reproduce that section as follows:

Director's orders: delivery and service of documents

- 71** (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.
- (2) In addition to the authority under subsection (1), the director may make any of the following orders:
- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
 - (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

I find, based on the Landlord's undisputed testimony that the Tenants failed to provide a forwarding address. I also accept the Landlord's evidence that they do not know the address at which the Tenants reside.

The Tenants provided an email address on their Application for Dispute Resolution.

Pursuant to sections 64(3) and 71(2)(a), **I authorize the Landlords to serve their Application for Dispute Resolution and supporting evidence on the Tenants by email to the email address provided on the Tenants' Application for Dispute Resolution.** For the purposes of this my Decision, service by email to this email address will be deemed sufficient service on *both* Tenants. That email address is reproduced on the unpublished cover page of this my Decision.

Conclusion

Having failed to attend the hearing, the Tenants' application is dismissed without leave to reapply.

The Landlords' Application is adjourned to the date and time noted on the enclosed Notice of Adjourned Hearing to permit service of their Application for Dispute Resolution and supporting evidence.

Pursuant to section 71 of the *Act*, the Landlords may serve the Application for Dispute Resolution and their supporting evidence on the Tenants by email to the email address provided by the Tenants on their Application for Dispute Resolution.

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: May 16, 2017

Residential Tenancy Branch