



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL-S, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which began at 2:00 p.m. and lasted approximately 20 minutes. The landlord 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 called in late to the hearing at 2:05 p.m.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package on November 20, 2017, by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with this application.

When I questioned the landlord as to what address the landlord's application was sent to, she said it was the rental unit address. She claimed that the tenants did not provide a forwarding address or a residential address at the end of the tenancy. She said that even though she knew the tenants abandoned the rental unit by October 4, 2017, she knew that the mail would be forwarded to their new address. She stated that Canada Post notified her that the tenants did not pick up the mail that she sent to them.

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].*

I find that the landlord was unable to show that the address where she sent the application was a residential or forwarding address provided by the tenants. It was the rental unit address where the tenants had abandoned the rental unit more than a month before the application was served. The mail was not retrieved by the tenants. The tenants did not appear at this hearing to confirm service.

Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the *Act* and the tenants were not served with the landlord's application.

At the hearing, I informed the landlord that I was dismissing her application with leave to reapply, except for the filing fee. I notified her that she would be required to file a new application and pay a new filing fee, if she wished to pursue this matter further. I cautioned her that she would have to prove service at the next hearing, including evidence of the tenants' forwarding or residential address.

For the landlord's information, RTB 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**.*

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: June 25, 2018

Residential Tenancy Branch