



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

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

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 36 minutes. The landlord's agents and legal counsel (collectively "the landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Landlord's Application

Section 89 of the *Act* establishes that when a landlord serves an application for dispute resolution in relation to a monetary claim it must be served by leaving it directly with the tenant or by registered mail to a forwarding address provided by the tenant. Residential Tenancy Policy Guideline # 12 "Service Provisions," defines registered mail as any method of mail delivery provided by Canada Post that confirms delivery to a named person.

During the hearing the landlord testified that on an undisclosed date, a process server attempted to personally serve the landlord's application for dispute resolution and was unsuccessful, therefore the landlord emailed the application on April 13, 2018. It is the landlord's position that the tenant received the application as evidenced by her written email response on April 13, 2018. The landlord acknowledged that he did not apply for a substituted service order to allow the application to be served by way of email.

When questioned whether the landlord served the application by any other method, the landlord initially testified that it was sent by registered mail. The landlord did not provide a date, registered mail receipt or tracking number as proof of service. The landlord later testified that on an undisclosed date, the application was sent by way of courier. The landlord was uncertain whether the courier required signature upon delivery and did not provide a courier receipt or tracking number as proof of service

In the absence of corroborating receipts or tracking numbers I find that the landlord has failed to establish the application was served to the tenant as required under section 89.

Section 71 of the *Act* permits me the authority to deem a party sufficiently served with documents even if service did not occur in a manner that is required under the *Act*. The landlord contends that the tenant's written email response on April 13, 2018 indicates receipt of the application. The landlord's email indicates that the "Notice of Dispute is attached", but I note that such an attachment cannot be seen. Further in the tenant's written response she does not explicitly confirm receipt of the application package.

Without oral evidence from the tenant to confirm receipt or an order for substitute service, I find that the application was not sufficiently served. The landlord's application is dismissed with leave to reapply.

Conclusion

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: September 28, 2018

Residential Tenancy Branch