



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to section 58 of the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, 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 15 minutes. The landlord's agent ("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 confirmed that he was the property manager for the landlord company named in this application and he had permission to speak on its behalf at this hearing.

The hearing began at 1:30 p.m. The landlord called in late at approximately 1:36 p.m. stating that he was on another call. The hearing ended at approximately 1:45 p.m.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on March 27, 2018, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing.

When I questioned the landlord as to what address the landlord's application was sent to, he said it was the rental unit address. He claimed that he did not know whether the tenant was still residing at the rental unit at the time the application was sent because the rental unit was sold to another owner around January or February 2018.

When I looked up the Canada Post tracking number provided by the landlord on the Canada Post website, it indicated that the package was returned to the landlord sender because on May 11, 2018 it stated: "Recipient not located at address provided. Item being returned to sender." The landlord said that he knew the mail was returned to sender.

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 the landlord sent the application was a residential address for the tenant. The rental unit was sold to a different landlord. The landlord does not know whether the tenant was still living at the rental unit. The mail was returned to sender. The Canada Post website indicates that the recipient could not be found at that address. The tenant did not appear at this hearing to confirm receipt of the application.

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

At the hearing, I informed the landlord that I was dismissing the landlord's application with leave to reapply, except for the filing fee. I notified him that the landlord would be required to file a new application and pay a new filing fee, if the landlord wished to pursue this matter further. I cautioned him that the landlord would have to prove service at the next hearing, including evidence of the tenant's 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: October 16, 2018

Residential Tenancy Branch