



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEN BOYKO PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order 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 two tenants ("male tenant" and "tenant company") did not attend this hearing, which lasted approximately 12 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 she was the caretaker for the landlord company named in this application and that she had permission to speak on its behalf as an agent.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the male tenant was served with the landlord's application for dispute resolution hearing packages by way of registered mail on March 29, 2018 and April 4, 2018. She stated that she did not serve the tenant company but she served a female tenant of the tenant company. The landlord only provided one receipt for March 29, 2018 but none for April 4, 2018.

The landlord was provided with 12 minutes during the hearing in order to locate her service information and answer service questions. When I asked her what documents she served, she was not sure. She said that she served the documents in two separate packages but could not remember what was served and when. She said that she could not be 100% sure of what was served to the male tenant.

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 confirm whether all of the required documents, including the notice of hearing, application for dispute resolution and written evidence package, were served to both tenants and when they were served. The tenants did not appear at this hearing to confirm receipt of the landlord's application.

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 the landlord's application with leave to reapply, except for the filing fee. I notified her 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 her that she would have to prove service at the next hearing, including the date, method and Canada Post receipts and tracking reports if sent by registered mail. I also notified her that she needs to know exactly which documents were served and when. I informed her that she was required to serve both named tenants not just one.

The landlord became upset once I notified her of my decision. She said that I was being difficult since I was asking her service questions. I notified her that she had 12 minutes of hearing time to answer one question regarding service and she was still unsure of what was served and when. Before I could obtain the landlord's contact

information in order to send her a copy of my decision, she disconnected from the hearing without warning.

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 18, 2018

Residential Tenancy Branch