



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN MOUNTAIN HOLDINGS
and [tenant name suppressed to protect privacy]

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 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

The landlord's agent attended on behalf of the corporate landlord at the date and time set for the hearing of this matter. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the notice of this hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

As only the landlord's agent attended the hearing, I asked the landlord's agent to confirm that the tenants had been served with the landlord's Application for Dispute Resolution for this hearing.

The landlord's agent testified that the tenants had moved out of the rental unit on June 1, 2018. The landlord's agent testified that she sent the landlord's Application for Dispute Resolution for this hearing by Canada Post registered mail individually to both tenants on July 23, 2018. The landlord submitted into documentary evidence a copy of the two registered mail address receipts with registered mail tracking numbers. The registered mail address receipts indicate a P.O. Box as the mailing address. The landlord's agent explained that to her knowledge the tenants are still living and working in the same city where the rental unit is located, and that in this city, located in the

interior of the Province, the P.O. Box number would continue to be a valid address for mail service for the tenants.

The landlord submitted into documentary evidence the tenancy agreement, in which I note that the tenants' "address of place being rented" includes both a street address and a P.O. Box number. The P.O. Box number is the same number used by the landlord for registered mail service of the landlord's Application for this hearing.

The landlord's agent testified that packages sent to the tenants were returned as "unclaimed".

Although the refusal of a party to accept or pick up registered mail is not a means to avoid service of documents, in this matter, I am not satisfied that the landlord's Application for this hearing was served to the tenants in accordance with the *Act*.

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*].

Further to this, Residential Tenancy Branch Policy Guideline #12 provides direction regarding proof of service, as follows, 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.

In this case, the tenants did not provide a forwarding address. Therefore, the landlord sent the Application for Dispute Resolution for this hearing to the tenants' P.O. Box number that was provided on the tenants' tenancy agreement at the start of the tenancy. The tenants moved out of the rental unit June 1, 2018, and the landlord did not mail the Application to the tenants until July 23, 2018. The landlord does not know the address where the tenants currently reside. Further to this, the packages were returned to the landlord as "unclaimed" and the tenants did not attend the hearing. The landlord failed to submit any evidence to demonstrate that the P.O. Box is a valid address for the tenants and that they continue to receive mail at that address.

Due to these circumstances, I find that the landlord was unable to show that the address where the landlord sent the Application was "the address at which the person resides" or "that the address of service was the person's residence at the time of service". Therefore, I am unable to find that the landlord's Application for Dispute Resolution for this hearing was served in accordance with section 89 of the *Act*.

As such, due to this issue with the service of documents, I dismiss the landlord's Application with leave to reapply, except for the filing which is dismissed without leave to reapply. For clarity, this means that the landlord will need to file a new application and pay a new filing fee if the landlord wishes to reapply.

The landlord may wish to contact the Residential Tenancy Branch and speak with an Information Officer if further information is needed regarding service of documents in situations where a tenant has failed to provide a forwarding address and the landlord does not have a residential address for the tenant.

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: November 23, 2018

Residential Tenancy Branch