



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") 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 tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord JA" and the tenant did not attend this hearing, which lasted approximately 15 minutes. Landlord SA ("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 had permission to represent landlord JA as an agent at this hearing.

Preliminary Issue – Service of the Landlords' Application

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package by way of registered mail to the rental unit address. The landlord provided a Canada Post receipt and tracking number with this application. The landlord initially testified that she served the tenant on August 16, 2018 but stated that it might be August 17, 2018 as per the Canada Post website tracking information.

The landlord stated that the tenant said that he would have his mail forwarded from the rental unit to a new address. The landlords provided a text message, which does not

clearly state this. She said that the tenant did not provide a forwarding address after he vacated the rental unit.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (emphasis added):

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 landlords failed to provide sufficient evidence that the tenant was served with the landlords' application at a residential or forwarding address, in accordance with section 89(1) of the *Act*. The tenant did not provide a forwarding address to the landlords. The tenant did not attend this hearing to confirm service.

During the hearing, when I checked the Canada Post website using the tracking number that the landlords provided, it indicated "signature option was not requested."

Accordingly, I find that the landlords did not serve the tenant with their application because it was sent by mail but no signature option was requested. Therefore, delivery to a named person, could not be confirmed as per Residential Tenancy Policy Guideline 12.

As the landlords failed to prove service in accordance with section 89(1) of the *Act*, I find that the tenant was not served with the landlords' application. At the hearing, I advised the landlord that I was dismissing the landlords' application with leave to reapply, except for the \$100.00 filing fee which is dismissed without leave to reapply. I notified the landlord that if she wished to pursue this matter further, she would have to file a new application and pay another filing fee. I cautioned her to prove service at the

next hearing, as per section 89(1) of the *Act*. I also informed the landlord that she could apply for an order for substituted service under section 71 of the *Act*, if necessary.

For the landlords' information, Residential Tenancy Policy Guideline 12 states the following, in part (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 landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlords' 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: December 18, 2018

Residential Tenancy Branch