



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

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

- a monetary order for damage to the rental unit and for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The two landlords (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The female landlord did not testify at this hearing, only the male landlord ("landlord") did. The landlord confirmed that he had permission to represent the female landlord, as an agent at this hearing.

Preliminary Issue – Service of Landlords' Application

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package on August 30, 2018, by way of registered mail. The landlords provided a photograph of a Canada Post receipt and tracking number with this application.

When I questioned the landlord as to what address the application was sent to, he said it was the tenant's place of employment. He said that the tenant provided the address to him in a text message at the end of August 2018. The landlords did not provide a copy of this text message with their application. The landlord stated that the tenant did

not give him a residential address. He said that the mail was unclaimed and returned to him as the 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 landlords were unable to show that the address where they sent their application was a residential address or a forwarding address provided by the tenant. It was sent to an employment address, which is not permitted by section 89 of the *Act*. The landlords failed to show this was a forwarding address provided by the tenant, as they did not provide a copy of the text message. The mail was returned to sender. The tenant did not appear at this hearing to confirm receipt of the application.

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

At the hearing, I informed the landlord that I was dismissing the landlords' application with leave to reapply, except for the filing fee. I notified the landlord that he would be required to file a new application and pay a new filing fee, if he wishes to pursue this matter further. I cautioned the landlord that he would have to prove service at the next hearing, including recent documentary evidence of the tenant's forwarding or residential address. I notified him that he could consult a lawyer for legal advice and speak to an information officer for information, not legal advice, at the Residential Tenancy Branch.

For the landlords' 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 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 20, 2018

Residential Tenancy Branch