



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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 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 tenant did not attend this hearing, which lasted approximately 9 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 had permission to represent the landlord named in this application, as an agent at this hearing.

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 November 7, 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 application was sent to, she said it was the tenant's forwarding address provided to her in a text message on October 23, 2018. The landlord did not provide a copy of this text message with this application. She said that the mail was unclaimed and returned to the landlord 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 landlord was unable to show that the address where she sent this application was a residential address or a forwarding address provided by the tenant. The landlord failed to show a forwarding address provided by the tenant, as a copy of the text message was not provided by the landlord. 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 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 her that the landlord would be required to file a new application and pay a new filing fee, if the landlord wishes to pursue this matter further. I cautioned the landlord that service would have to be proven at the next hearing, including recent documentary 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: February 19, 2019

Residential Tenancy Branch