



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINCERE REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on December 14, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30 PM on April 8, 2019 as a teleconference hearing. Only the Landlord's Agent S.W. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 17 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that S.W. and I were the only persons who had called into this teleconference.

S.W. testified that she served the Application and documentary evidence package to the Tenants by email on December 19, 2018. The Landlord submitted documentary evidence indicating that the email was sent to the Tenants. The Landlord submitted an application for substitute service which indicates that the Tenants no longer reside in the rental unit and did not provide the Landlord with their forwarding address. S.W. stated that she is unaware of any other method to serve the Tenants the Landlord's Application package, therefore has requested that email service be accepted as an approved means of service. S.W. also stated that the Landlord and Tenants have previously communicated through email.

Preliminary Matters

Section 89(1) of the *Act* stipulates: 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*].

The Residential Tenancy Branch Policy Guideline 12 (the “Policy Guidelines”) states that; all parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

According to the Residential Tenancy Policy Guideline 14 (the “Policy Guidelines”); an application for substituted service may be made at the time of filing the application for dispute resolution or at a time after filing. The party applying for substituted service must be able to demonstrate two things:

- *that the party to be served cannot be served by any of the methods permitted under the Legislation, and*
- *that there is a reasonable expectation that the party being served will receive the documents by the method requested.*

In this case, the Landlord submitted documentary evidence that they served the Tenants with the Application and documentary evidence through email. The Landlord has provided insufficient evidence to demonstrate that the Tenants received the Landlord’s email containing the Application package. Furthermore, the Landlord has

provided insufficient evidence to demonstrate that email was used as a regular form of communication between the parties throughout the tenancy; therefore, I find that it is not reasonable to expect that the Tenants would have received the Landlord Application package through email service. As the Tenants did not submit any documentary evidence in preparation for this hearing and did not appear during the hearing, I find that it is more likely than not that they have not be served with the Landlord's Application package.

I dismiss the Landlord's application for substitute service with leave to reapply. As a result, I find that the Tenants have not been served with the Landlord's Application in a manner required by Section 89(1) of the *Act*. In light of the above, I dismiss the Landlord's Application in its entirety with leave to reapply.

Conclusion

The Landlord was not successful in their application for substitute service to allow for email service of their Application package to the Tenants. As a result, I find that the Tenants have not been served with the Landlord's Application in a manner required by Section 89(1) of the *Act* and dismiss the Landlord's Application 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: April 09, 2019

Residential Tenancy Branch