



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy 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 11 minutes. The 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 intended to call a witness, who was excluded from the outset of the hearing, but the witness did not testify because we did not proceed with merits of this application.

Preliminary Issue – Service of the Landlord’s Application

The landlord testified that the tenant was served with the landlord’s application for dispute resolution hearing package by way of Xpresspost on December 29, 2018. The landlord did not provide a Canada Post receipt or tracking number. She said that she lost the tracking number. She said that she only had a tracking number for mail on March 16, 2019, when she sent her written evidence package to the tenant, not her application or notice of hearing.

Section 89(1) of the *Act* outlines the methods of service for a monetary application for dispute resolution, which reads as follows:

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].*

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**.*

I find that the landlord failed to provide sufficient evidence that the tenant was served with the landlord's application, in accordance with section 89(1) of the *Act*. The landlord failed to provide a Canada Post receipt or tracking number to confirm service of the registered mail. The tenant did not attend this hearing to confirm service.

At the hearing, I advised the landlord that I was dismissing her 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 of the *Act* and Residential Tenancy Policy Guideline 12. I also informed her that she would have to provide proof that any mailing address was a residential or forwarding address provided by the tenant, as per section 89 of the *Act*.

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: April 15, 2019

Residential Tenancy Branch