



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction and Preliminary Matters

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on March 4, 2019 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- a monetary order for unpaid rent;
- an order to retain all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on June 24, 2019 as a teleconference hearing. The Landlord appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 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 the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant by registered mail to the dispute address. The Landlord stated that the Tenant did not receive the Application packaged or documentary evidence as the tenancy ended on February 1, 2019 and the Tenant did not provide the Landlords with his forwarding address.

Section 89(1) of the Act provides guidance for parties with regards to service of certain documents including an Application for Dispute Resolution and the Notice of Hearing. The Notice must be given in one of the following ways; by leaving a copy with the Tenant (personal service); or, by sending a copy by registered mail **to the address at which the Tenant resides**.

As the Tenant did not appear at the time of the hearing, and the Landlord stated that the Application package and documentary evidence package was sent to the dispute address after the end of the tenancy, I am not satisfied that the Tenant was properly served with the Application for Dispute Resolution or Notice of Hearing. As a result, this Application is dismissed with leave to reapply. This does not extend any time limits set out in the Act.

The Landlord indicated that he is aware of where the Tenant works, therefore personal service may be an option available to the Landlords pursuant to Section 89 of the *Act*. Should personal service not be achievable, an application for substituted service may be made at the time of filing the application for dispute resolution or at a time after filing.

In these cases, 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.

It shall also be noted that according to Section 39 of the *Act*, a landlord may retain the security deposit if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Conclusion

The Landlords did not serve the Tenant with the Application and documentary evidence package to the address at which the Tenant resides. As such, 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: June 24, 2019

Residential Tenancy Branch