



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL-S, MNDCL-S, MNDL-S**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee for this application from the tenants pursuant to section 72;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- A monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property pursuant to section 67.

The tenants did not attend this hearing, although I left the teleconference connection open until 1:50 P.M. to enable the tenant to call into this hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

Both of the landlords attended the hearing. The landlords testified that they served the tenants with the Notice of Dispute Resolution Proceedings Package by sending copies to two different addresses. The first was the address of a company they testified was owned and operated by the landlord. The second address is an address that was supplied to the landlords by the tenants when the tenants filled out their application to rent the unit. The landlords believe this second address is that of a family member, however they don't know if this is where the tenants currently reside since the tenants never provided a forwarding address when they moved out *'in the middle of the night'*.

Preliminary Issue – Service of Notice of Hearing/Application for Dispute Resolution Proceedings

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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 document]...*

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* states:

Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.

Part 15 of the Residential Tenancy Branch Policy Guideline PG-12 [Service Provisions] speaks specifically to proof of service.

15. PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The landlords testified that the Notices of Dispute Resolution Proceedings were not sent to the address where the tenants reside or to the forwarding address of the

tenants. Understandably, the landlords are unaware of the tenants' current residence, since no forwarding address was provided to them when the tenants moved out.

Despite this, the landlords are required to comply with section 89 of the *Act* in serving the application. Based on the evidence before me, I am not satisfied the tenants were properly served with the Notice of Dispute Resolution Proceedings in accordance with section 89 of the *Act*. The landlord's application is dismissed with leave to reapply.

Conclusion

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 23, 2020

Residential Tenancy Branch