



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 09, 2020 (the "Application"). The Landlord sought to recover unpaid rent and reimbursement for the filing fee.

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified as follows.

The hearing package and evidence were sent to the Tenant twice, once by registered mail and once by email.

The registered mail was sent January 16, 2020 to the address noted for the Tenant on the Application. The tenancy ended May 18, 2019. In June or July of 2019, the Tenant stopped communicating with him and he got her address from a tenant in the downstairs unit who was friends with the Tenant. He confirmed the address with his friend who saw the Tenant at the address. Tracking Number 1 relates to this.

He sent three emails to the Tenant on May 22, 2020. The Tenant did not reply to the emails. The parties did communicate by email during the tenancy at the email address used. The last email correspondence between the parties, where the Tenant responded, was in April of 2019.

The Landlord submitted a receipt for the registered mail and the emails sent to the Tenant.

I looked Tracking Number 1 up on the Canada Post website which shows the package was unclaimed and returned to the sender.

Timelines for serving the hearing package and evidence are set out in the *Residential Tenancy Act* (the “Act”) and Rules of Procedure (the “Rules”).

Section 59(3) of the *Act* requires an applicant to serve a copy of the Application for Dispute Resolution on the respondent within three days of filing it.

Rule 3.1 of the Rules requires an applicant to serve the hearing package and their evidence on the respondent within three days of the RTB making the hearing package available.

Rule 3.14 of the Rules requires an applicant to serve their evidence on the respondent “not less than” fourteen days before the hearing. Given the wording, the first and last days are excluded in this calculation as explained at page six of the Rules.

Section 89(1) of the *Act* sets out the ways in which the Application could be served on the Tenant and states:

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) by sending a copy by registered mail to the address at which the person resides...
- (c) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (d) as ordered by the director under section 71 (1)...

Further, due to the current pandemic, there is a Director's Order dated March 30, 2020 in place which states:

- a document of the type described in section 88 or 89 of the Residential Tenancy Act...has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:
 - the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;
 - the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or
 - the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

In relation to the registered mail, it had to be sent to the Tenant's residence or a forwarding address provided by the Tenant.

The package was not sent to a forwarding address provided by the Tenant as the Tenant did not provide the address used.

The Landlord obtained the address used from a friend of the Tenant and from his own friend. I am not satisfied the address used is the Tenant's residence for the following reasons. There is no evidence before me from either the Tenant's friend or Landlord's friend to support that they provided the address or to show how these individuals knew the Tenant's address. Given this, I am not satisfied the Tenant's friend or Landlord's friend are reliable sources in relation to the Tenant's address. I also note that the address was provided to the Landlord in June or July of 2019, more than five months

before the hearing package and evidence were sent to the address. I am not satisfied based on the evidence provided that the hearing package was sent to the Tenant's residence.

In the circumstances, I am not satisfied the hearing package was sent to the Tenant in accordance with section 89(1) of the *Act*. Therefore, the deeming provision set out in section 90(a) of the *Act* does not apply. The Canada Post website shows the Tenant did not receive the package. I am not satisfied the Tenant was properly served with the package.

In relation to the emails, I do not find these to constitute sufficient service for the following reasons.

The Tenant did not reply to the emails. The last email the Landlord sent to the Tenant at the address used, where the Tenant replied, was in April of 2019, more than a year prior to the emails with the hearing package and evidence attached being sent. I am not satisfied the Tenant received the emails or could still be reached at the email address used. The Tenant did not attend the hearing or submit evidence for the hearing such that I can be satisfied she received the emails.

Further, even if I accepted that the emails were a sufficient form of service, the emails were sent May 22, 2020. The emails would have been deemed received by the Tenant May 25, 2020. This timeline does not comply with section 59(3) of the *Act*, rule 3.1 of the Rules or rule 3.14 of the Rules. I note that rule 3.14 of the Rules is the last point at which the Landlord could have been serving evidence on the Tenant and is well past the point at which the Landlord should have been serving the hearing package on the Tenant. The Tenant would have been deemed to have received the hearing package and evidence ten days before the hearing in circumstances where the Landlord filed the Application almost five months before the hearing. I do not find serving the Tenant by email ten days before the hearing sufficient service.

In the circumstances, I am not satisfied the Tenant was sufficiently served either by registered mail or email. Given I am not satisfied the Tenant was sufficiently served, I dismiss the Application with leave to re-apply. The Landlord can re-apply for the compensation sought. However, the Landlord will need to serve the Tenant in accordance with the *Act*, Rules and any Director's Orders in place at that time. This decision does not extend any time limits set out in the *Act*.

Conclusion

The Application is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 05, 2020

Residential Tenancy Branch