



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution by direct request, made on May 2, 2020 (the "Application") which was adjourned to a participatory hearing. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 am on June 9, 2020 as a teleconference hearing. The Tenants' Representative L.E. and the Landlord attended the hearing at the appointed date and time.

L.E. testified that she served the Application and documentary evidence to the Landlord by text message, registered mail, and by email in early April 2020. The Tenants provided a copy of a text message exchange between the Landlord and L.E.. The Tenants provided a copy of one email which is addressed to the Landlord containing the Application. Lastly the Tenants provided a copy of the registered mail receipt in support of the mailing.

The Landlord stated that he did not receive the Tenants' Application or documentary and only learned about the hearing from the Residential Tenancy Branch. During the hearing the Landlord stated that he was unaware of the details of the Application and was not prepared to respond to the claim or documentary evidence.

Preliminary Matters

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

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended: 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 this case, the Tenants provided evidence to demonstrate that they served the Landlord by registered mail. During the hearing, L.E. stated that the Registered Mail

was sent to the dispute address rather than the Landlord's address for service as indicated on the tenancy agreement. During the hearing, the Landlord stated that he does not reside at the dispute address. The Landlord further confirmed that his address for service as indicated on the tenancy agreement is current and valid. As such, I find that the Landlord was not sufficiently served to the address for service.

L.E. stated that the Tenants also served the Landlord by email which is currently a permitted form of service in accordance with the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 outlined above. I find however, that the Tenants provided insufficient evidence to demonstrate that the Landlord confirmed receipt of the email by way of a return email, or that the Landlord's email was routinely used to correspond about tenancy matters throughout the tenancy. As such, I find that the Landlord was not sufficiently served by email.

Lastly, I find that the Tenants' attempt to serve the Landlord via text message is not an approved form of service. In light of the above, I find that the Tenants did not sufficiently serve the Landlord with a copy of the Application or documentary evidence in accordance with the Act. As such, I dismiss the Tenants' Application with leave to reapply.

Conclusion

The Tenants failed to serve the Landlord with the Application and documentary evidence in accordance with the Act. As such, their 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 09, 2020

Residential Tenancy Branch