



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for a monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant did not attend this hearing, although I left the teleconference connection open until 9:45 a.m. to enable the tenant to call into this hearing scheduled for 9:30 a.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 landlord, his assistant, and I were the only ones who had called into this teleconference.

The landlord attended the hearing and testified he served the tenant with the Notice of Dispute Resolution Proceedings by on May 31, 2020 at 6:09 p.m. email at m.....@hotmail.com. The landlord testified and provided a copy of an SMS message from the tenant indicating her email address is m.....@hotmail.ca. The landlord testified he also sent a copy of the Notice of Dispute Resolution Proceedings package to the tenant by text message on May 31, 2020.

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

The *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020 ("Covid-19 Order") has temporarily suspended the requirement to serve the Notice of Dispute Resolution Proceedings package by personal service.

The landlord was required to serve the Notice of Dispute Resolution Proceedings package in accordance with the director's order dated March 30, 2020, which states that it can be served 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

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. Part 15 of PG-12 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.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

...

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 landlord testified he sent the Notice of Dispute Resolution Proceedings to the tenant at an incorrect email address as the email address he sent it to had a domain ending in .com rather than .ca. Based on this evidence, I am not satisfied the tenant was properly served with the landlord's notice of hearing and Application for Dispute Resolution. The director's order does not allow for service by SMS text message.

Consequently, I dismiss this application with leave to reapply.

Conclusion

The landlord's application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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 22, 2020

Residential Tenancy Branch