



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was scheduled to deal with a landlord's application for unpaid and loss of rent and recovery of damage and cleaning costs; and authorization to retain the tenant's security deposit. The landlord's agents appeared for the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear at the hearing, I explored service of hearing documents upon the tenant. The landlord's agent testified the proceeding package and evidence was sent to the tenant via registered mail on March 20, 2020 using the forwarding address the tenant provided on the move-out inspection report that was prepared on January 10, 2020.

The landlord orally provided the registered mail tracking number as proof of service. A search of the tracking number showed that registered mail was sent on March 20, 2020 and returned to sender due to an "incomplete address" and "customer addressing error".

The landlord's agents stated they suspected the tenant was giving them a false forwarding address as he was hesitant to provide one.

I ordered the landlord to provide me with a copy of the returned registered mail envelope so that I could confirm the landlord addressed the envelope using the address the tenant provided to the landlord. The landlord was given a deadline of July 20, 2020 to provide this.

On July 19, 2020 the landlord provided a written submission stating the registered mail envelope had been recycled but that she was certain she addressed the registered mail envelope using the forwarding address written by the tenant. The landlord also

submitted that the “addressing error” described by Canada Post is due to the fact the address written by the tenant does not exist. The landlord provided print outs from the Land Title and Survey Authority website showing the address the forwarding address does not exist. The landlord also provided images of the homes in the area of the forwarding address and noting that the house number provided by the tenant does not exist. The landlord provided a copy of the registered mail receipt, including tracking number, but the name and address of the recipient was left blank. The landlord also provided a printout of the Canada Post tracking report.

Where a respondent does not appear at a hearing, the applicant bears the burden to prove the respondent was served with notification of the proceeding in a manner that complies with the Act. Serving a tenant with notification of a proceeding is to be done in a manner that complies with section 89 of the Act. Registered mail is an acceptable method of serving a respondent with a monetary claim. Where a landlord serves a tenant by registered mail, the registered mail is to be addressed to the tenant’s address of residence at the time of mailing or the forwarding address provided by the tenant.

Residential Tenancy Branch Policy Guideline 12: *Service provisions* provides information and policy statements with respect to service requirements, including a section entitled: “Proof of Service”. Below, I reproduced relevant portions of the “Proof of Service” section (with my emphasis underlined):

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.

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

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.

In this case, I was provided a copy of a move-out inspection report dated January 10, 2020 that has a forwarding address for the tenant. I am unable to determine who wrote the tenant's forwarding address as the printing is not dissimilar to the printing of the landlord's agent on the report. I note that the tenant's forwarding address includes a postal code.

As for the address the landlord wrote on the registered mail envelope sent to the tenant, there is an absence of evidence to corroborate the landlord's submission that she wrote the address the same as the address the tenant provided. The registered mail receipt provides space for writing the name and address of the recipient of the registered mail but it was left blank. The registered mail envelope that was returned the landlord was not provided to me. In order to conclude the tenant was properly served I must rely upon the landlord's unsubstantiated testimony and written submission that she addressed the registered mail the same as the forwarding address provided by the tenant; however, I found inconsistencies in the landlord's submissions that causes me to have concerns over the reliability of the landlord's submissions. To illustrate:

In filing the application, the landlord indicated the landlord had been provided an Order of Possession on November 7, 2020 (to be effective two (2) days after service upon the tenant) but the tenant had given notice to end tenancy in January 2020 and the landlord had not yet re-rented the unit as of March 6, 2020. Further exploration of this revealed that on October 29, 2019 the landlord had applied for an Order of Possession with respect to unpaid rent for October 2019. The landlord testified that the tenant presented payment of the rent for October 2019 and November 2019 rent on October 31, 2019. I enquired as to whether the landlord reinstated the tenancy upon receipt of the outstanding rent and November 2019 rent. The landlord hesitated before stating the landlord reinstated the tenancy. I enquired as to whether the reinstatement was communicated to the tenant and the landlord could not recall whether this was communicated to the tenant. Despite the landlord taking the position that it reinstated the existing tenancy, the landlord served the tenant with the Order of Possession on December 20, 2019 due to unpaid rent for December 2019.

I find the landlord's actions inconsistent with its statements to me. If the tenancy was reinstated after the landlord applied for the Order of Possession for unpaid rent for October 2019, the landlord was not at liberty to serve the tenant with the Order of Possession issued on November 7, 2019. Rather, if the landlord reinstated the tenancy the landlord would have to give the tenant another 10 Day Notice to end Tenancy for Unpaid Rent with respect to the unpaid rent for December 2019 and if the rent was not

paid the landlord would have to make a new Application for Dispute Resolution for an Order of Possession due to unpaid rent for December 2019.

Also of consideration is that the tenant's forwarding address appears on the move-out inspection report that was prepared on January 10, 2020 but the landlord did not file its Application for Dispute Resolution to make a claim against the tenant's security deposit until March 6, 2020. The landlord is a professional landlord yet the landlord did not provide any explanation for exceeding the landlord's 15 day time limit to make a claim against the tenant's security deposit which suggests to me the forwarding address may have been obtained after the move-out inspection of January 10, 2020. I note that the forwarding address written on the move-out inspection report includes a postal code and it actually corresponds to the houses on either side of the forwarding address and I find it highly unusual that a tenant would provide a forwarding address that does not exist but if it did he would provide the correct postal code.

In light of the above, I find the landlord's actions and statements are not entirely consistent or credible and I will not rely upon the landlord's agent's testimony alone that she addressed the registered mail envelope using the same address the tenant provided. Therefore, I decline to proceed with this claim and it is dismissed with leave to reapply.

I make no order for the landlord to return the security deposit to the tenant as I am unsatisfied the tenant provided his forwarding address to the landlord in writing. Rather, if the tenant seeks return of the security deposit, including doubling of the deposit, I leave it upon the tenant to provide the landlord with his forwarding address in writing and make an Application for Dispute Resolution.

Conclusion

The landlord's application is dismissed with leave.

I make no order for return of the security deposit to the tenant. If the tenant seeks return of the security deposit he must provide the landlord with a forwarding address in writing where the landlord may serve the tenant and if the landlord fails to take action with respect to making a claim against the security deposit in accordance with the Act the tenant may make his own Application for Dispute Resolution seeking return of the security deposit, including doubling of the deposit.

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: July 22, 2020

Residential Tenancy Branch