



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, MNRL, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent and compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- an authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 1:43 P.M. to enable the tenant (respondent) to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. 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 and I were the only ones who had called into this teleconference. The landlord (applicant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord was granted an order for substitute service on March 10, 2020. The landlord affirmed she served the application on March 11 by email to the email address mentioned on the cover page of this decision. The email was not submitted into evidence.

Rule of Procedure 3.5 states:

3.5 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.

(emphasis added)

Residential Tenancy Branch Policy Guideline 12 states:

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.

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.

Proof of service personally on an adult who apparently resides with the tenant should include:

- either an acknowledgment of 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 as well as confirmation that the person is an adult; or,
- witness confirmation of service on the adult including 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 as well as a description of how the witness knows the person served is an adult who apparently resides with the tenant.

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.

Proof of service by methods other than personal service or Registered Mail should include:

- the date and time of service,
- details of the method used to serve, including:
 - o the name of the adult served,
 - o if posted, the address where the documents were attached,

- o the fax number to which the document was faxed and proof that the fax transmission was completed,
- o the address of the mailbox or mail slot used,
- o who effected service

A photograph of a posted or deposited document in its posted or deposited location may reinforce the veracity of service.

(emphasis added)

As the email was not submitted by the landlord, I can not confirm the email was sent to the email address mentioned in the order for substitute service.

Thus, I find the tenant was not served in accordance with the Act.

Conclusion

I dismiss the landlord's application for a monetary order for unpaid rent and compensation for damage and loss under the Act with leave to reapply.

I dismiss the landlord's application for an authorization to recover the filing fee without 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: July 06, 2020

Residential Tenancy Branch