



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants (male and female) did not attend this hearing, which lasted approximately 26 minutes. The landlord's agent ("landlord") 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 confirmed that she had permission to represent the landlord owner named in this application.

The landlord claimed that she did not have a forwarding address for the female tenant. She stated that she applied for substituted service by email, but it was denied, as per an Adjudicator's decision, dated July 6, 2020, claiming that the last emails were from February 1, 2020 and there were no active or current email address for the tenants within the last three months. The landlord claimed that she still served both tenants at their respective email addresses.

The landlord testified that the male tenant was served with the landlord's application for dispute resolution hearing package by way of registered mail on June 19, 2020. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. She said that the mail was sent to a forwarding address provided by the male tenant's sister at the move-out condition inspection on February 1, 2020. A

copy of the report was provided, which indicates that the forwarding address is for the male tenant's sister, not the male tenant.

When I looked up the tracking number on the Canada Post website, it indicated: "we didn't find an item associated with this number." The landlord looked up the information during the hearing and found the same result. She stated that she did not know whether the male tenant received the mail, but she assumed he did. The landlord did not provide a Canada Post tracking report with this application, nor did she inquire about this information when she served it.

The landlord claimed that she did not know whether the forwarding address was a current address for the male tenant, but the male tenant's sister said that she could receive mail there. She said that she also served the male tenant's sister and provided a Canada Post tracking number verbally during the hearing for service on June 20, 2020. When I asked why the male tenant's sister was being served when she was not a tenant or a party to this application, the landlord again claimed that the male tenant's sister confirmed she could be served there because that was her residence.

Section 89(1) of the Act outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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) 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 documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*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.***

Accordingly, I find that the landlord did not serve the tenants with the landlord's application, as required by section 89 of the Act and Residential Tenancy Policy Guideline 12. The tenants did not attend this hearing to confirm service.

The female tenant was not served by registered mail. There was no forwarding address provided by the female tenant. The landlord was not permitted to serve to the female tenant's email address as per the substituted service decision of July 6, 2020, since there was no recent email correspondence after February 1, 2020.

I find that the male tenant was not served by registered mail. The landlord did not provide a Canada Post tracking report with this application. The Canada Post website tracking report does not indicate that the application was delivered to a named person. The forwarding address was the residence of the male tenant's sister, as per the landlord and the move-out condition inspection report. This address was obtained on February 1, 2020 and the landlord did not know whether this was a valid or current address for the male tenant. The landlord was not permitted to serve to the male tenant's email address as per the substituted service decision of July 6, 2020, since there was no recent email correspondence after February 1, 2020.

I do not find that serving the male tenant's sister, who is not a party to this proceeding or a tenant, is sufficient to prove service for either of the two tenants.

Although email service was permitted during the covid-19 pandemic and the state of emergency, which was when this application was filed, I find that the landlord did not meet the criteria as per the director's order, dated March 30, 2020, below. The tenants did not respond to any of the emails from the landlord and there was no current or recent activity from the email addresses beyond February 1, 2020.

The director's order states the following regarding email service during the state of emergency (my emphasis added):

- *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.*

I notified the landlord that this application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed her that the landlord could file a new application and pay a new filing fee, if the landlord wishes to pursue this matter further. I informed her that if the landlord was serving again by registered mail, the landlord would be required to provide documentary proof of the tenants' valid and current forwarding addresses, as well as proof of the registered mail as per Residential Tenancy Policy Guideline 12 above.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's 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: July 17, 2020

Residential Tenancy Branch