



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPN, MNRL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under the tenant's Notice to End Tenancy pursuant to section 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

HL attended as agent for the landlord ("the landlord"). The tenant attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions.

Preliminary Issue – Service of the Notice of Hearing and Application for Dispute Resolution on tenant

The tenant attended the teleconference, was affirmed, and provided evidence.

The tenant testified she had not received the *Notice of Hearing and Application for Dispute Resolution*. The tenant testified she vacated the unit on August 6, 2020. The tenant stated the landlord had her email address but did not notify her of the hearing.

The landlord acknowledged he did not serve the tenant personally as she left the unit without providing her forwarding address and he did not send her the documents by email, their primary means of communicating.

The tenant testified that she received an unsolicited email from the RTB before the hearing informing her of the date of the hearing. This was the first she knew of the hearing scheduled for this day. She did not receive the evidence.

Upon receiving the email from the RTB, the tenant testified that she believed the RTB was notifying her she was *required* to attend the hearing, even though she had not been served with Notice of the Hearing by the landlord. This was the *only* reason she attended the hearing.

The requirements for service of dispute resolution documents are set out in section 89 of the *Act* which states:

89 (1) *An application for dispute resolution ... **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) ...*

[Emphasis added]

The landlord knew the tenant had vacated the unit and acknowledged he could have applied for an order for substituted service. The landlord made no effort to notify the tenant of the hearing, to obtain her forwarding address, or to apply for an order for substituted service.

The Rules of Procedure state as follows:

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.

I find the landlord has failed to establish that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution as required under the provisions of section 89.

I therefore dismiss the landlord's application without leave to reapply.

Conclusion

I dismiss the landlord's application 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: August 18, 2020

Residential Tenancy Branch