



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S

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 compensation for unpaid rent, pursuant to section 67 of the Act;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67 of the Act; and
- an authorization to retain the tenant's security deposit under section 38 of the Act.

The landlord (applicant) attended the hearing and was given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant (respondent) did not attend, although I waited until 1:49 P.M. to enable him to connect with this teleconference hearing scheduled for 1:30 P.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only persons who had called into this teleconference.

The landlord affirmed on June 01, 2020 she contacted the tenant and went to the rental unit to serve in person the application. However, the tenant avoided meeting her and the landlord left a copy of the application on the kitchen countertop. At first the landlord affirmed the tenant was in the rental unit but did not see her, later in the hearing the landlord affirmed the tenant was not in the rental unit but his girlfriend and mother-in-law were. The landlord also sent a copy of the application by text message.

Section 89 of the Act states:

(1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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].

(emphasis added)

Residential Tenancy Branch Policy Guideline 12 states:

3. SPECIAL REQUIREMENTS FOR SERVICE OF DOCUMENTS for:

☐ An application for dispute resolution

[...]

There are only three methods of service that may be used for these matters. These are:

i. Personal service

o Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord.

o Where a landlord is personally serving a tenant, the landlord must serve by leaving a copy with the tenant. In cases where there are multiple tenants, the landlord must serve a copy to each co-tenant separately.

This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

ii. Registered Mail

iii. A Residential Tenancy Branch Order Regarding Service

(emphasis added)

Based on the landlord's testimony, I find the tenant was not served in accordance with section 89(1) of the Act.

Conclusion

I dismiss the landlord's application 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: September 29, 2020

Residential Tenancy Branch