



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, 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 loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:47 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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.

Preliminary Issue – Service

While I have turned my mind to the evidence and the testimony of the attending party regarding service of the dispute resolution application and the evidence (the materials), not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's testimony regarding service and my findings are set out below. I explained rule 7.4 to the attending party; it is her obligation to present the evidence to substantiate the application.

I explained to the landlord that she must provide me only relevant testimony, as an arbitrator I may interrupt her, she must remain civil and orderly during the hearing and I can mute or remove the offending party, per Rule of Procedure 6.10.

The landlord affirmed the tenancy started on August 01, 2018 and ended on July 26, 2019. The tenants did not provide their forwarding address.

The landlord stated she tried to find the tenants' forwarding address since the end of the tenancy. The landlord submitted into evidence two text messages sent to the tenants on Feb 24, 2020 asking them about the forwarding address. Both messages were not answered. The landlord submitted into evidence two address searches. Both searches did not find an address for the tenants.

The landlord affirmed the tenants submitted a rental application in the summer of 2018 containing the address mentioned on the cover page of this decision. The landlord applied for an order for substitute service to authorize her to serve the application at the tenants' address provided in the rental application. The handwritten application for substitute service (RTB form 13) is dated March 04, 2020 and was included with the dispute resolution application which was filed on October 21, 2020.

Despite not having an order allowing substituted service, the landlord mailed two packages containing the materials to the tenants on October 27, 2020 (the tracking numbers are on the cover page of this application). The landlord said the packages were mailed as parcel with a tracking number. I interrupted the landlord when she was giving me testimony about Canada Post manager's name. The landlord laughed and got angry because I interrupted her. I warned the landlord about her behaviour.

Video file named 6159 shows a conversation between the landlord and another person stating that one of the tenants works at the address mentioned on the cover page of this decision.

The landlord submitted into evidence 197 video and image files named with random numbers. I explained to the landlord Rule of Procedure 3.7. The landlord laughed once again and stated I must consider all the evidence. I warned the landlord about her behaviour for the second time.

The landlord played an audio recording of a conversation between the landlord and another person about the tenants' current address. The landlord is emotional during most of this conversation and it is not clear what she is saying. After listening to three minutes I warned the landlord the recording does not contain relevant information regarding service of the materials and that she must provide me relevant evidence about the tenants' current address. I listened to two more minutes and ordered the landlord to stop playing it.

The landlord was abusive during the 77-minute hearing, stated I was yelling and interrupting her with an upsetting tone of voice and that I must consider all her evidence and accept service.

Section 89 of the Act establishes how the applicant must serve the application:

- (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].

Residential Tenancy Branch Policy Guideline 12 contains explanations about service:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

[...]

14.ORDERS FOR SUBSTITUTED SERVICE

An application for substituted service may be made at the time of filing the application for dispute resolution or at a time after filing. The party applying for substituted service must be able to demonstrate two things:

- that the party to be served cannot be served by any of the methods permitted under the Legislation, and
- **that there is a reasonable expectation that the party being served will receive the documents by the method requested.**

(emphasis added)

In light of the two unsuccessful address search services, unanswered text messages, vague and non-convincing testimony provided by the landlord, I am not satisfied the landlord served the materials to the current tenants' address. I find video file 6159 does not indicate clearly which tenant is currently working at the tenants' address.

The landlord was provided with multiple warnings during the 77-minute hearing and was disrespectful several times. The landlord did not present coherent testimony and did not prove, on a balance of probabilities, there is a reasonable expectation that the tenants will receive the materials at the address mentioned on the cover page of this decision.

Thus, I dismiss the landlord's application for an order for substitute service. I find the tenants (respondents) were not served in accordance with section 89 of the Act.

Conclusion

I dismiss the landlord's dispute resolution application with leave to reapply. Leave to reapply is not extension of any applicable timeline.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

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: February 23, 2021

Residential Tenancy Branch