



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, 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, pursuant to sections 26 and 67;
- an authorization to retain all of the tenant's security deposit in satisfaction of the monetary order requested, pursuant to section 72; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:48 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's agent (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's agent stated he served the application on November 12, 2020 by registered mail sent to the address mentioned on the cover page of this decision. The registered mail package was returned to the landlord. The landlord hired a process server to serve the tenant, however, this was unsuccessful.

The landlord's agent affirmed the tenant abandoned the rental unit on September 30, 2020 and did not provide her forwarding address. The landlord's agent testified the landlord saw the tenant at the address mentioned on the cover page of this decision. The landlord's agent also said the tenancy agreement was verbal.

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 how the applicant may find the respondent's address for 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.

As I cannot confirm the tenant's address is the one used by the landlord to serve this application, I cannot conduct the hearing. The tenant was not served in accordance with the Act.

Conclusion

I dismiss the landlord's application with leave to reapply.

I dismiss the landlord's application for an authorization to recover the filing fee for this 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: February 24, 2021

Residential Tenancy Branch