



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNRL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 14 minutes. 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.

The hearing began at 9:30 a.m. with only me present. The landlord called in at 9:31 a.m. The landlord then disconnected from the hearing at 9:32 a.m. and called back in at 9:35 a.m., stating that she had telephone issues. The hearing ended at 9:44 a.m.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the landlord's paper application only, not any submissions from the tenant. An "interim decision," dated December 23, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The landlord was required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

The landlord initially said that she did not know the date of service of the above documents. She then claimed that she served the above documents to the tenant on December 4, 2020, by way of registered mail.

When I notified the landlord that the interim decision was dated on December 23, 2020, she then stated that she served the tenant with the above documents on December 30, 2020. She provided a Canada Post tracking number verbally during the hearing. The landlord did not provide a Canada Post receipt or tracking report for the December 30, 2020 service date, with this application. The landlord explained that she served the tenant at a PO Box address that he provided to her in a text message. She claimed that she did not provide this text message with her application.

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 tenant was not served with the interim decision, notice of reconvened hearing and all other required documents, as per section 89 of the *Act*.

I find that the landlord was unable to provide sufficient documentary proof of a residential or forwarding address given by the tenant or when the landlord obtained this address. The landlord did not provide a copy of the text message from the tenant, requesting service to a PO Box address. The landlord had ample time from filing this application on November 20, 2020, to the hearing date of March 18, 2021, to provide these documents. The tenant did not attend this hearing to confirm service.

I notified the landlord that her application was dismissed with leave to reapply. I informed her that she could file a new application and provide proof of service at the next hearing, if she chooses to pursue this matter further. The landlord confirmed her understanding of same.

Conclusion

The landlord's entire 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: March 18, 2021

Residential Tenancy Branch