



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 11 minutes. The landlord and her agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's husband was present with the landlord and observed the hearing but did not testify. The landlord confirmed that her agent had permission to speak on her behalf at this hearing.

Preliminary Issue – Service of Landlord's Application

The landlord stated that the tenant was served with a copy of the landlord's application for dispute resolution hearing package on November 27, 2020, by way of registered mail. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing.

The landlord's agent stated that the landlord's application was sent to a forwarding address provided by the tenant on the move-out condition inspection report but he did not provide a copy of the report because he did not file this application, the landlord did. The landlord's agent stated that the tenant vacated the rental unit on August 31, 2020 but did not indicate when the move-out condition inspection or report were completed.

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 landlord's application, as per section 89(1) of the *Act*.

I find that the landlord did not provide sufficient documentary proof of a forwarding address provided by the tenant, as required by section 89(1)(d) of the *Act*. The landlord did not provide a copy of the move-out condition inspection report containing the forwarding address that was written by the tenant. The tenant's address was not contained on the Canada Post receipt that was submitted by the landlord with this application. The landlord did not provide a Canada Post tracking report with this application. The tenant did not attend this hearing to confirm service.

I notified the landlord that her application was dismissed with leave to reapply, except for the filing fee. I notified her that she could file a new application, pay another filing fee and provide proof of service at the next hearing, if the landlord chooses to pursue this matter further. I cautioned the landlord about providing documentary evidence of a current residential or forwarding address if she intended to serve the tenant by registered mail in the future. The landlord confirmed her understanding of same.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's 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 11, 2021

Residential Tenancy Branch