



Dispute Resolution Services

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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 10 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 landlord confirmed that he had permission to represent the owner of the rental unit, as an agent 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 December 11, 2020, by way of registered mail to the rental unit address. The landlord provided a Canada Post tracking number verbally during the hearing.

The landlord stated that the tenant vacated the rental unit on December 10, 2020. He said that the tenant was removed by a bailiff, pursuant to an order of possession. He claimed that the tenant did not provide a forwarding address after he vacated the rental unit. He explained that he had no other address to send the landlord's application, except the rental unit address.

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 sent the application to the tenant at the rental unit address on December 11, 2020, after he knew the tenant had already vacated the rental unit on December 10, 2020. I find that the landlord failed to show that the rental unit was the tenant's residential address for service at the time he mailed his application. The tenant did not attend this hearing to confirm service.

I notified the landlord that his application was dismissed with leave to reapply, except for the filing fee. I notified him that he 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. The landlord confirmed his understanding of same.

I informed the landlord that I could not provide legal advice to him regarding service of documents. I notified him that he could hire a lawyer in order to obtain legal advice. The landlord confirmed his 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 26, 2021

Residential Tenancy Branch