



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMAX REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 11 minutes. The landlord's two agents, "landlord SX" and "landlord JX," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Landlord SX and landlord JX both confirmed that they were the property managers for the landlord company named in this application and that they had permission to speak on its behalf.

Preliminary Issue – Service of Landlord's Application

Landlord SX testified that the tenants were served with the landlord's application for dispute resolution hearing package by way of registered mail on December 19, 2020. The landlord did not provide any Canada Post receipts or tracking reports with this application.

Landlord SX said that the mail was sent to a forwarding address provided by the tenants in a text message. She explained that the forwarding address provided by the tenants on the move-out condition inspection report on December 1, 2020, had the wrong postal code and the address did not exist. She said that the tenants provided a different address in a text message on December 12, 2020, which she provided, but it does not indicate what date it was given, the phone number it came from, or the phone number it was sent to. The landlord said that she could provide this information after the hearing because she had it in front of her during the hearing.

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 landlord did not serve the tenants with the landlord's application, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12.

The landlord was unable to provide sufficient documentary proof of a forwarding address given by the tenants or when the landlord obtained this address. The text message provided by the landlord does not indicate the date, the number it came from, the number it was sent to, or that the tenants provided this information to the landlord. The landlord had ample time from filing this application on December 12, 2020, to the hearing date of April 20, 2021, to provide this information. The tenants did not attend this hearing to confirm service.

I notified the landlord's agents that the landlord's application was dismissed with leave to reapply, except for the filing fee. I informed them that the landlord could file a new application and pay a new filing fee, if the landlord wished to pursue this matter further. I cautioned them to provide documentary proof of the tenants' valid and current forwarding or residential address if a future application is served by registered mail to the tenants. They confirmed their 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: April 20, 2021

Residential Tenancy Branch