



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession, to a monetary Order for unpaid rent and late fees, and to retain all of part of the security deposit?

Background and Evidence

The Agent for the Landlord #2 stated that on March 03, 2021 the Dispute Resolution Package was sent to each Tenant, via registered mail, at the rental unit. He cited two tracking numbers that corroborates this statement.

The Agent for the Landlord stated that the rental unit was vacated on February 26, 2021 and a forwarding address for the Tenants was not provided.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* permits a party to serve an Application for Dispute Resolution to the other party in 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*];
- (f) by any other means of service provided for in the regulations.

Section 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

Section 89(2) of the *Act* permits a party to serve an Application for Dispute Resolution relating to sections 55, 56, or 56.1 of the *Act* in the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(f) by any other means of service provided for in the regulations.

Section 43(3) of the *Residential Tenancy Regulation* stipulates that documents described in section 89(2) of the *Act* may, for the purposes of section 89(2)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

On the basis of the testimony of the Agent for the Landlord #2, I find that the hearing documents were sent, by registered mail, to the rental unit on March 03, 2021; that the rental unit had been vacated prior to that date; and that a forwarding address for the Tenants has not been provided.

As the rental unit was vacated prior to March 03, 2021, I find that the hearing documents were not served to the Tenants pursuant to sections 89(1)(c) or 89(2)(b) of the *Act*, as they were not sent to an address at which the Tenants resided on March 03, 2021.

As a forwarding address was not provided for the Tenants, I find that the hearing documents were not served to the Tenants pursuant to section 89(1)(d) of the *Act*.

The Landlord submitted no evidence that causes me to conclude that the Tenants received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the Tenants have been properly served with the Application for Dispute Resolution, I am unable to proceed with this matter in the absence of the Tenants.

The Application for Dispute Resolution is dismissed, with leave to reapply.

Conclusion

The Application for Dispute Resolution is dismissed, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution in regard to these matters.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 31, 2021

Residential Tenancy Branch