



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on December 12, 2020 (the “Application”). The Landlords applied as follows:

- For compensation for damage to the rental unit
- To recover unpaid rent
- For reimbursement for the filing fee

The Landlords appeared at the hearing with the Witness. The Tenants did not appear at the hearing. I explained the hearing process to the Landlords who did not have questions when asked. I told the Landlords they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords and Witness provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlords’ evidence.

The Witness testified as follows. They attended the Tenants’ house. A young lady answered the door. They asked if the young lady lived there and she said she did. They asked for the Tenants. The young lady said the Tenants live there but were not home. They gave the hearing package to the young lady to give to the Tenants. They filmed this.

The Landlords testified that their evidence was in the package with the hearing package.

The Landlords said they had been told they could serve the hearing package and evidence in person.

I advised the Landlords that the hearing package was not served in accordance with the *Residential Tenancy Act* (the “*Act*”). The Landlords provided further information about a previous hearing and statements the Tenants have made. The Landlords advised that there was no documentary evidence submitted where the Tenants acknowledged receiving the package.

I told the Landlords I would make a final decision about service in my written decision and would hear the claim. I heard the Landlords in relation to the claim.

The Landlords submitted a video of the Witness serving the hearing package. A person answered the door. The person confirmed B.E. and S. live there. The Witness did not confirm with the person that they were an adult and did not confirm with the person that they lived at the address.

I have fully considered the testimony and submissions of the Landlords about service, the testimony of the Witness about service and the video of service submitted.

Sections 88 and 89 of the *Act* state:

How to give or serve documents generally

88 All documents, **other than those referred to in section 89** [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;**

- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service provided for in the regulations.

Special rules for certain documents

89 (1) **An application for dispute resolution** or a decision of the director to proceed with a review under Division 2 of Part 5, 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];
- (f) by any other means of service provided for in the regulations.

(2) **An application by a landlord under section 55** [order of possession for the landlord], **56** [application for order ending tenancy early] or **56.1** [order of possession: tenancy frustrated] must be given to the tenant in one of 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...

When documents are considered to have been received

90 A document given or served **in accordance with section 88** [how to give or serve documents generally] or **89** [special rules for certain documents], unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

(emphasis added)

The hearing package had to be served on the Tenants in accordance with section 89(1) of the *Act*. Serving the Tenants in person and leaving documents at the Tenants' residence with an adult who apparently resides with the Tenants are two separate methods of service as shown by sections 88(a) and (e) as well as sections 89(2)(a) and (c). Here, the Tenants were not served in person as the package was not handed to the Tenants. The package was handed to someone who answered the Tenants' door. Further, the Witness did not confirm that the person who answered the Tenants' door was an adult or that they lived with the Tenants and therefore these points have not been proven. In any event, the method of service used was not permitted under section 89(1) of the *Act* and therefore the hearing package was not served on the Tenants in accordance with the *Act*.

Given the hearing package was not served in accordance with section 89(1) of the *Act*, the Tenants are not deemed to have received the hearing package pursuant to section 90 of the *Act*. The Tenants did not submit evidence for the hearing which may have satisfied me that they received the hearing package. The Tenants did not appear at the hearing to acknowledge service. There is no documentary evidence before me from the Landlords in which the Tenants acknowledge service of the hearing package such as an email, letter or text message indicating they received the package.

In the circumstances, I am not satisfied the Tenants were served with the hearing package in accordance with the *Act* and therefore the Application is dismissed **with** leave to re-apply, other than the request to recover the filing fee which is dismissed **without** leave to re-apply. The Landlords can re-apply for the compensation claimed. This decision does not extend any time limits set out in the *Act*.

Conclusion

I am not satisfied the Tenants were served with the hearing package in accordance with the *Act* and therefore the Application is dismissed **with** leave to re-apply, other than the request to recover the filing fee which is dismissed **without** leave to re-apply.

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 03, 2021

Residential Tenancy Branch