



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:53 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. Landlords MY (the landlord) and RY attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness MC also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords, their witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Landlord MY stated she served the Notice of Hearing and the evidence (the materials) by registered mail sent to the tenants' address 1 on January 07, 2021. Landlord MY testified she obtained the tenants' address 2, informed in this application as the tenants' address, in the tenants' notice of dispute resolution for a prior application. The tracking numbers and both addresses are on the cover page of this decision.

Section 89 of the Act states:

- (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].

Residential Tenancy Branch Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

In light of the two different tenants' addresses informed by the landlords, I am not satisfied the landlords served the materials to the tenants' forwarding address. Thus, I find the tenants (respondents) were not served in accordance with section 89 of the Act.

I dismiss the landlords' application for a monetary order and for an authorization to retain the tenants' security deposit with leave to reapply. Leave to reapply is not extension of any applicable timeline.

As the landlords were not successful in this application, I find the landlords are not entitled to recover the \$100.00 filing fee.

Conclusion

I dismiss the landlords' application for a monetary order and for an authorization to retain the tenants' security deposit with leave to reapply. I dismiss the landlords' application an authorization to recover the filing fee without 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: May 10, 2021