



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XVI LP C/O METCAP LIVING MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, 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 15 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of a hearing by any party.

The landlord did not make any adjournment or accommodation requests.

At the outset of the hearing, the landlord stated that the tenant vacated the rental unit on February 27, 2021 and the landlord did not require an order of possession. I notified the landlord that this portion of the landlord's application was dismissed without leave to reapply. The landlord confirmed her understanding of same.

Preliminary Issue – Service of Landlord's Application

Initially, the landlord indicated that she did not have service information in front of her during the hearing. The landlord then looked up the information on a computer during this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package by way of registered mail on March 9, 2021, to the rental unit address where the tenant was residing until February 27, 2021. The landlord provided two Canada Post receipts and one tracking number with this application. The landlord confirmed the tracking number verbally during the hearing.

I questioned the landlord as to why one of the landlord's receipts indicated March 9, 2021 and one indicated March 10, 2021. The landlord then claimed that the landlord's application was sent on March 10, 2021, when she looked up the tracking information online on the Canada Post website. She said that the mail was not picked up by the tenant. She claimed that the tenant moved out and did not provide notice to the landlord or a forwarding 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.

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

I find that the landlord served the tenant at the rental unit address on March 10, 2021, after the tenant vacated the unit on February 27, 2021. I find that the landlord did not serve the tenant at a current residential address or a forwarding address provided by the tenant. The Canada Post website for the landlord's tracking number indicates that the mail was returned to sender. The tenant did not attend this hearing to confirm service.

I notified the landlord that the landlord's application was dismissed with leave to reapply, except for the order of possession and the \$100.00 filing fee. I informed her that the landlord could file a new application and pay a new filing fee, if the landlord decides to pursue this matter further. I cautioned her that the landlord was required to prove service of an application to a current residential or forwarding address provided by the tenant. The landlord confirmed her understanding of same.

Conclusion

The landlord's application for an order of possession and 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: June 07, 2021

Residential Tenancy Branch