



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent and other damages or loss under the Act, regulations, or tenancy agreement.

The landlord appeared at the hearing and was affirmed. The landlord was ordered to not make an unofficial audio recording of the proceeding.

The tenant did not appear at the hearing despite leaving the teleconference call open at least 20 minutes.

Sine the tenant did not appear, I explored service of hearing materials upon the tenant. The landlord testified that she placed the proceeding package in the mailbox at the rental unit on February 12, 2021 as the tenant was still residing in the rental unit at that time. The landlord testified that she sent an Amendment, Monetary Order Worksheet, and evidence to the tenant via email on May 21, 2021 but she did not receive any response to the email.

Where a respondent does not appear at the hearing, the applicant bears the burden to prove the hearing documents and materials were served upon the respondent in a manner that complies with the Act.

Section 89 provides for the ways an Application for Dispute Resolution and other required documents ("the proceeding package") must be served upon the respondent. When the Application for Dispute Resolution was prepared, section 89(1) of the Act required that a Monetary claim had to be served upon the respondent in one of the following ways: in person to the respondent; by registered mail; or pursuant to a substituted service order. Placing the proceeding package in the mailbox at the rental

unit is not one of the permissible methods for serving an Application for Dispute Resolution and other required documents in the proceeding package for a monetary claim.

Emailing materials “an email address provided as an address for service by the person” became a permissible method of service under section 89(1) starting in March 2021. However, under the Rules of Procedure, an Amendment and evidence must be served at least 14 clear days before the scheduled hearing date, meaning the date of receipt and the date of the hearing cannot be counted. Where a party uses email to serve, section 90 of the Act deems it received three days later. In this case, the tenant would have been deemed served with the Amendment and evidence on May 24, 2021 which is only 10 clear days before the hearing. Therefore, I find the landlord did not sufficiently serve the Amendment and evidence either.

In light of the above, I declined to further consider this application and I dismissed it 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 04, 2021

Residential Tenancy Branch