



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, MNDL

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 landlord 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; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:52 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. The landlord and interpreter SW (the landlord) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 landlord, her interpreter 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.

The landlord stated she served the Notice of Hearing and the evidence (the materials) by registered mail sent on February 19, 2021. The tracking numbers and the address used for service are on the cover page of this decision.

The landlord stated the tenants provided the address used for service of the materials on May 29, 2020, when they signed the tenancy agreement. The landlord testified the tenants said they work at the address provided. The tenants abandoned the rental unit on February 01, 2021 and did not provide a forwarding address.

Section 89 of the Act establishes how the applicant must serve the application:

(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].

(emphasis added)

Residential Tenancy Branch Policy Guideline 12 contains explanations about service:

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.

[...]

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.

Based on the landlord's testimony, I find the address provided by the tenants (respondents) on May 29, 2020, when the tenancy agreement was signed, is not the tenants' current address. Per section 89(1)(c) of the Act, the tenants must be served where they reside, not where they work. Thus, I find the tenants were not served in accordance with section 89 of the Act.

Conclusion

I dismiss the landlord's application for a monetary order with leave to reapply. Leave to reapply is not extension of any applicable timeline.

I dismiss the landlord's application for 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: June 14, 2021

Residential Tenancy Branch