



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Twenty One Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was 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's agent and I were the only ones who had called into this teleconference.

The landlord applied for an Order of Substituted Service which was granted in a Substituted Service Decision dated March 1, 2021. The March 1, 2021 decision states:

....For this reason, I allow the landlord substituted service of the Application for Dispute Resolution, with supporting documents and written evidence, by e-mail to the tenant at the e-mail address indicated on the first page of this decision. I order the landlord to provide proof of service of the e-mail which may include a printout of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant....

The landlord's agent testified that the tenant was served with this application for dispute resolution on March 8, 2021 via e-mail. The landlord did not enter into evidence a printout of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with the Substituted Service Decision.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

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 document]...*

I find that the landlord has not proved, on a balance of probabilities, that the tenant was served in accordance with the Substituted Service Decision or in accordance with section 89 of the *Act* as no proof of service documents were entered into evidence. At the hearing, I advised the landlord's agent that I was dismissing the landlord's application with leave to reapply. The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

I notified the landlord's agent that if the landlord wished to pursue this matter further, the landlord would have to file a new application. I cautioned the landlord's agent to be prepared to prove service at the next hearing.

Conclusion

I dismiss the landlord's application to recover the \$100.00 filing fee 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: July 12, 2021

Residential Tenancy Branch