



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CALLAHAN PROPERTY GROUP
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order 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 6 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.

The landlord confirmed that she was the property manager for the landlord company named in this application and she had permission to speak on its behalf.

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

I explained the hearing process to the landlord. The landlord had an opportunity to ask questions. The landlord did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord's Application

The landlord stated that the tenant moved out of the rental unit on December 31, 2020 and this application was filed on March 8, 2021.

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 16, 2021. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing.

The landlord said that she sent the application to a forwarding address provided by the tenant in an email, dated January 13, 2021. She claimed that she had the email in her possession, but she did not provide a copy for this hearing

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 failed to provide documentary proof of a forwarding address provided by the tenant and when that address was given to the landlord. The landlord claimed that she had an email from January 13, 2021, but she did not provide a copy for this hearing. The landlord had ample time from filing this application on March 8, 2021 to this hearing date of July 27, 2021, to provide this information. 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 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. The landlord confirmed her understanding of same.

Conclusion

The landlord's application 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: July 27, 2021

Residential Tenancy Branch