



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OK PACIFIC DEVELOPMENT LTD. REAL
PROPERTY MANAGEMENT EXECUTIVES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 11 minutes. The landlords' 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 property management company named in this application. She stated that she had permission to represent both landlord companies named in this application, at this hearing. The landlord explained that the landlord property management company was the agent for the landlord owner company named in this application.

I informed the landlord that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by any party. At the end of this hearing, the landlord affirmed under oath that she did not record this hearing.

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.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to correct the name of the landlord property management company. The landlord confirmed the correct name during this hearing. The landlord requested this amendment during the hearing. I do not find any prejudice to the tenants in making this amendment.

Preliminary Issue – Service of Landlords' Application

At the outset of the hearing, the landlord confirmed that the tenants vacated the rental unit on February 2, 2021. She stated that the landlords' application was filed on March 10, 2021. The landlord explained that she used the rental unit address for service, even though she knew the tenants moved out. She said that she applied for substituted service by email, but she did not receive a response after emailing the application to the RTB. She explained that she did not follow up with the RTB on the substituted service application.

The landlord stated that the tenants were served with the landlords' application for dispute resolution hearing package by way of registered mail to the rental unit address. She did not know the date of service. She provided one Canada Post tracking number verbally during the hearing. When I looked up the tracking number online on the Canada Post website, it indicated that the mail was sent out on January 22, 2021, prior to the notice of hearing date of March 16, 2021. The landlord did not provide any Canada Post receipts or tracking reports with this application.

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.***

Accordingly, I find that the tenants were not served with the landlords' application, as per section 89 of the *Act*. The landlord did not know the date of service. The landlords did not provide two receipts, two tracking numbers or two tracking reports for the registered mailing. The landlord provided one tracking number for January 22, 2021, prior to the notice of hearing date of March 16, 2021. The landlords used the rental unit address for service, even though the tenants moved out. There is no decision from the RTB allowing the landlords to use a substituted service method. The tenants did not appear at his hearing to confirm service.

At the hearing, I notified the landlord that the landlords' application was dismissed with leave to reapply, except for the filing fee. I notified her that the landlords could file a new application, pay another filing fee, and provide proof of service at the next hearing, if the landlords want to pursue this matter in the future. The landlord confirmed her understanding of same.

Conclusion

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlords' 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: August 03, 2021

Residential Tenancy Branch