



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNR, OLC

Introduction

This hearing dealt with the tenants' two applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The landlord did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. Tenant L.M. 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 Tenant L.M. and I were the only ones who had called into this teleconference.

The tenants' first application for dispute resolution does not state the landlord's last name. The tenants' second application for dispute resolution states the landlord's last name. Tenant L.M. testified that when the first application for dispute resolution was filed, he did not know the landlord's last name. Pursuant to section 64 of the *Act*, I amend the tenants' first application to state the landlord's last name.

Tenant L.M. testified that he served the landlord with both applications for dispute resolution via email on June 7, 2021 and via regular mail on June 8, 2021. The June 7, 2021 emails were not entered into evidence. No receipts or other proof of the June 8, 2021

regular mailings were entered into evidence. Tenant L.M. testified that he did not have authorization from the landlord to serve the landlord via email.

Section 89 of the *Act* sets out the approved methods of service for applications for dispute resolution as follows:

- 89** (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*];
 - (f)by any other means of service provided for in the regulations.

Section 43(2) of the Regulation to the Residential Tenancy Act states:

For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

Residential Tenancy Guideline #12 states:

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

I find that tenant L.M. did not prove that he served the landlord via email or via registered mail as no proof of service documents or the serving emails were entered

into evidence. I find that tenant L.M. did not prove, on a balance of probabilities, that he was permitted to serve the landlord via email as set out in section 43(2) of the Regulation. I find that the tenants did not serve the landlord with either application for dispute resolution in an approved manner as set out in section 89 of the *Act*. The tenants' applications are therefore dismissed, with leave to reapply, for failure to prove service in accordance with section 89 of the *Act*.

I notified tenant L.M. that if he wished to pursue this matter further, he would have to file a new application. I cautioned him to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

Conclusion

The tenants' applications are 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: September 21, 2021

Residential Tenancy Branch