



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, 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 tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male landlord" and the tenant did not attend this hearing, which lasted approximately 16 minutes. The female landlord ("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 had permission to represent the male landlord at this hearing (collectively "landlords").

At the outset of this hearing, 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 anyone. The landlord affirmed, under oath, that she would not record this hearing.

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

The landlord stated that she did not have a copy of the landlords' application in front of her during this hearing but said that she remembered what she applied for. The landlord was provided with 16 minutes during this hearing to find her application and service documents.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to correct both of the landlords' names, which were listed with their surnames first, and then their given names. The landlord consented to this amendment during the hearing. I find no prejudice to the tenant in making this amendment.

Preliminary Issue – Service of Landlords' Application

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package by way of email and registered mail, both on April 14, 2021. The landlords did not provide a Canada Post receipt and the landlord was unable to find the registered mail tracking number during this hearing. She said that the mail package was returned to her as sender.

The landlords provided a copy of an email from April 14, 2021, to the tenant. The email outlines various documents were emailed to the tenant, but not the landlords' application or the notice of hearing, that are required to be served to the tenant. Further, the landlords provided a copy of a response email from April 14, 2021, telling the landlord not to email the tenant. The landlord claimed that the email address has the incorrect spelling of the tenant's name, but that is how she received it from the tenant.

The landlord said that she sent the landlords application to the tenant's email address and a forwarding address for the tenant's mother, both provided by the tenant in a text message from March 26, 2021. The landlord claimed that she had the text message but she did not provide a copy for this hearing.

Section 89(1) of the *Act* states the following (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];*
- (f) **by any other means of service provided for in the regulations.**

Section 43(2) of the *Residential Tenancy Regulation* ("Regulation") states the following (my emphasis added):

*(2) 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 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 landlords did not serve the tenant with the landlords' application, as required by section 89 of the *Act*, section 43 of the *Regulation*, and Residential Tenancy Policy Guideline 12.

The landlords did not provide a Canada Post receipt or a tracking number for the registered mail. I find that the landlords did not provide sufficient proof of sending the landlords' application and notice of hearing in an email to the tenant on April 14, 2021. The landlord received an email on April 14, 2021, telling her not to email the tenant.

I find that the landlords failed to provide sufficient documentary proof of an email or a forwarding address provided by the tenant and when that address was given to the landlords. The landlord claimed that she had a text message from March 26, 2021, but she did not provide a copy for this hearing. The landlords had ample time from filing this application on April 7, 2021 to this hearing date of September 7, 2021, a period of five months, to provide the above information. The tenant did not attend this hearing to confirm service.

I notified the landlord that the landlords' application was dismissed with leave to reapply, except for the filing fee. I informed her that the landlords could file a new application and pay a new filing fee, if the landlords decide to pursue this matter further. 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: September 07, 2021

Residential Tenancy Branch