



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENINSULA ESTATES HOUSING
SOCIETY 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 section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent, G.D. and the tenant attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord's agent (the landlord) stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on April 30, 2021. The tenant argued that the notice of hearing package was not served, but that she did receive the landlord's submitted documentary evidence. The landlord repeated that the tenant was served with the notice of hearing package via Canada Post Registered Mail. The tenant argued again that no such documents were received. The tenant repeatedly stated that she did not know what the documents were for and did not find out about the hearing until she received an email reminder for the hearing. The tenant stated that upon receiving the email she contacted the Residential Tenancy Branch (RTB) and notified the information officer. The hearing particulars were provided to the tenant over the telephone. The landlord was asked if she had submitted any proof of service of serving

the hearing package to the tenant. The landlord argued repeatedly that the notice of hearing package was served by Canada Post Registered Mail. The landlord referenced a submitted copy of a Canada Post Tracking label as confirmation, the "Tracking label". An attempt to review all of the landlord's evidence submissions was attempted without success to locate the "Tracking label" file. The landlord stated that because she was not able to view her submitted evidence, she had submitted the same documents twice. A review of the landlord's entire evidence submission failed to find the "Tracking label" file, but a "Service Receipt" file was found that the landlord then confirmed as the supporting evidence that the package contained the entire hearing package. A review of the evidence file shows the Canada Post Tracking label and what appears to be the Canada Post Receipt under it. The landlord then argued that she had forwarded to the tenant the original email that was received from the RTB. The tenant re-confirmed that she did receive a package via Canada Post Registered Mail which contained the landlord's evidence which consisted of the tenancy agreement, an invoice for arrears and a copy of the completed condition inspection report for the move-in and move-out, but no hearing details. The tenant stated that she was not prepared to respond to the landlord's claim.

I find on a balance of probabilities based upon the evidence of both parties that the landlord has failed to provide sufficient evidence of service of the notice of hearing package upon the tenant. The landlord failed to provide sufficient supporting evidence of service of the hearing package to the tenant. On this basis, the landlord's application is dismissed with leave to reapply for lack of service. Leave to reapply is not an extension of any applicable limitation period.

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: October 25, 2021

Residential Tenancy Branch