



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG THE RESIDENTIAL GROUP
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* ("*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 14 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.

This hearing began at 1:30 p.m. and ended at 1:44 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I monitored the teleconference line throughout this hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord stated that he was the property manager for the landlord company named in this application and that he had permission to speak on its behalf. He said that the landlord company owns the rental unit. He confirmed the rental unit address during this hearing.

At the outset of this hearing, I informed the landlord that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. I informed him that I could not provide legal advice to him. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord’s Application

The landlord testified that the tenant was served with the landlord’s application for dispute resolution hearing package on May 7, 2021, by way of email, as per a substituted service decision, dated April 30, 2021, made by an Adjudicator (“SS decision”). The landlord provided a copy of the service email with this application.

The landlord’s “service email” does not indicate the tenant’s specific email address on it. It simply states “Mister [tenant’s surname]” in the field indicating who the email was sent “to.” It does not indicate the landlord’s email address in the field indicating who the email was sent “from.” It does not indicate the email address of the person who the email was copied to in the “CC” field.

I asked the landlord whether he had proof of what email address was used for the tenant. He said that the landlord’s service email was sent to the tenant’s email address as indicated on the SS decision. When I asked why the tenant’s specific email address does not show on the landlord’s service email, he claimed that because it was a new email drafted by the landlord, no email addresses showed on it.

The landlord maintained that the tenant’s specific email address showed on previous emails from March 22, 2021, since the tenant sent those emails to the landlord. He said that I could assume from those past emails that the same tenant’s email address was used because it listed the same description of “Mister [tenant’s surname]” next to the email address, and those emails were used to file the landlord’s substituted service application. He stated that he was not a “tech person” and he did “not work for Microsoft” so he did not know how to show the tenant’s email address on the landlord’s service email.

The landlord’s service email does not include a full copy of all of the documents that were sent by the landlord to the tenant. The landlord’s service email does not describe or properly list all of the documents that were attached to the email. The landlord’s service email includes abbreviated numbers and letters, which do not properly explain all of the documents that were included in the email. I asked the landlord what documents were attached, and he said “all of the documents” that were required.

When I asked the landlord to list the documents, he did not answer this question. When I asked whether he sent a copy of the SS decision to the tenant, as required, he said that he did. When I asked what attachment name was used for the SS decision or where I could locate it on the landlord's email, he did not answer this question.

The landlord did not indicate how or when the tenant was served with a copy of the landlord's amendment, changing the landlord's monetary claim, which was received by the RTB on May 10, 2021.

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 *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.***

At page 3 of the SS decision, the Adjudicator stated (emphasis in original):

I order the landlord to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

...

The landlord is granted an order for substituted service. The landlord may serve the tenant the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenant's e-mail address as set out above.

I find that the landlord did not provide sufficient proof of service of the landlord's application to the tenant by way of email to the tenant's specific email address. The landlord did not provide a copy of an email, confirming service to the tenant's specific email address, indicating who it was sent to. The above SS decision requires service: "to the tenant's email address as set out above." The tenant's specific email address is listed on the cover page of the SS decision. I find that the landlord did not provide proof, as required by Regulation 43(2) which requires: "emailing a copy to an email address provided as an address for service by the person."

I find that having a nickname of "Mister [tenant's surname]" appear in the "to" field of the email does not confirm that the correct email address was used for the tenant, as directed in the SS decision. The landlord's service email could have been sent to any email address, which may not be the correct one, as directed in the SS decision. I find that I cannot infer or assume that the correct tenant's email address was used, simply because the landlord provided prior emails from March 22, 2021, as these are separate and unrelated documents. Further, if the landlord was able to show the tenant's specific email address in those previous emails from March 22, 2021, the landlord could have done so for the email from May 7, 2021. Moreover, the landlord could have inquired with or obtained assistance from someone with knowledge of how to provide same. It is the landlord's burden of proof, regarding service of this application.

The landlord's service email does not describe or provide a full copy of all of the documents that were attached to the landlord's email and sent to the tenant. During this hearing, the landlord did not confirm all of the documents that were sent to the tenant. The landlord did not explain the abbreviated items listed in the landlord's service email during this hearing. The landlord did not confirm whether the application for dispute resolution, notice of hearing, amendment form, SS decision, and all other evidence were served to the tenant with the landlord's service email.

The landlord had ample time to provide the above evidence for this hearing, considering this application was filed on April 20, 2021, and this hearing occurred on October 29, 2021, over 6 months later. The tenant did not appear at this hearing to confirm receipt of the above documents.

Accordingly, I find that the landlord failed to prove service in accordance with section 89 of the *Act*, section 43(2) of the *Regulation*, and the SS decision. I find that the tenant was not served with the landlord's application for dispute resolution, notice of hearing, amendment, SS decision, and evidence.

During this hearing, I informed the landlord that I was dismissing the landlord's application with leave to reapply, except for the filing fee. I notified him that the landlord could file a new application and pay a new filing fee, if the landlord wants to pursue this matter in the future. The landlord confirmed his understanding of same.

The landlord stated that the tenant was not answering the landlord's emails and he did not know how to find him. He asked how he was supposed to reapply and serve the tenant again. I informed him repeatedly that I could not provide legal advice to him, as he repeatedly asked the same questions of me.

The landlord is cautioned about using the same SS decision to email application documents to the tenant, given that the SS decision was made on April 30, 2021, and it may not be relevant in a future application.

The landlord became very upset when I verbally provided my decision to him. He argued with me, interrupted me, and asked me to explain my decision repeatedly. I explained my decision many times during this hearing, but the landlord continued arguing with me, interrupting me, and asking me why his application was being dismissed. I cautioned the landlord about his inappropriate behaviour during this hearing, but he continued with 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: October 29, 2021

Residential Tenancy Branch