



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLYDE PROPERTY MANAGEMENT SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFL

Introduction

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

- a monetary order for compensation of \$29,400.00 from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 16 minutes. The two tenants, tenant JL ("tenant") and "tenant NJ" attended the hearing and were each 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 1:46 p.m. I monitored the teleconference line throughout this hearing. 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 the two tenants and I were the only people who called into this teleconference.

At the outset of this hearing, I informed both tenants that recording of this hearing was not permitted, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Both tenants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both tenants. I informed them that I could not provide legal advice to them. The tenants had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Tenants’ Application

The tenant testified that the landlord was served with a copy of the tenants’ application for dispute resolution hearing package by way of email on May 29, 2021.

The tenants did not provide a copy of the above email. The tenants did not provide documentation indicating that they were provided with an email address for service by the landlord. The tenant agreed that the tenancy agreement and notice to end tenancy provided by the tenants with this application, does not indicate an email address for service for the landlord.

During this hearing, I notified the tenants about the following provisions.

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.***

I find that the tenants did not serve the landlord with the tenants' application, as required by section 89 of the *Act* and section 43 of the *Regulation*.

I find that the tenants failed to provide sufficient documentary evidence that the landlord provided an email address for service to the tenants and when that email address was given. The tenants did not provide a copy of the email that they said they sent to the landlord, serving their application. The tenants had ample time from filing this application on May 14, 2021 to this hearing date of November 16, 2021, a period of over six months, to provide the above information. The landlord did not attend this hearing to confirm service.

I notified the tenants that their application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed them that they could file a new application and pay a new filing fee, if they want to pursue this matter in the future. They confirmed their understanding of same.

Conclusion

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

The remainder of the tenants' 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: November 16, 2021

Residential Tenancy Branch