Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:46 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agent WW (the landlord), 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 the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

The landlord affirmed he served the notice of hearing by email on May 19, 2021 and the tenant did not reply.

The substitute service decision dated May 31, 2021 states:

> I have reviewed all documentary evidence and **I find that the tenant's e-mail address was most recently used on February 28, 2020, fifteen months ago. I find the landlord has not submitted any recent e-mails from the tenant or any other proof, such as e-mail "read receipts", to demonstrate that the tenant's e-mail address is currently active and being regularly monitored, such as within the past two months.**
> I find I cannot conclude from this that the tenant would receive the Notice of Dispute Resolution Proceeding and have actual knowledge of the landlord's Application if it is served to the tenant's e-mail address.
> Therefore, the **landlord's application for substituted service of the Notice of Dispute Resolution Proceeding and supporting documents to the tenant's e-mail address is dismissed with leave to reapply.**
>
> (emphasis added)

The landlord confirmed he is aware of the May 31, 2021 substitute service decision.

The landlord stated he mailed the notice of hearing to a store owned by the tenant and he left a copy of the notice of hearing with an employee of the same store. The landlord also sent the notice of hearing via text message to the tenant.

Section 89(1) of the Act states:

> 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.

Rule of Procedure 3.5 states:

> 3.5 Proof of service required at the dispute resolution hearing
> At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Residential Tenancy Branch Policy Guideline 12 states:

> The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

I find the landlord failed to prove service of the application in accordance with section 89(1) of the Act. The landlord cannot serve the notice of hearing by mailing it to a commercial address, by leaving a copy of the notice of hearing with another person or via text message.

Based on the foregoing, I dismiss the landlord’s application for a monetary order with leave to reapply. Leave to reapply is not an extension of timeline to apply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for a monetary order with leave to reapply

I dismiss the landlord's application for an authorization to recover the filing fee without 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 05, 2021

Residential Tenancy Branch