



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order for Possession pursuant to section 49.2 of *the Residential Tenancy Act (Act)*.

Issue(s) to be Decided

Is the Landlord entitled to end this tenancy and to an Order of Possession because the Landlord intends, in good faith, to make renovations/repairs that require the rental unit to be vacant?

Background and Evidence

The Agent for the Landlord stated that on November 27, 2021 the Dispute Resolution Package was sent to the Tenant, via email. The Landlord submitted no evidence to corroborate this testimony.

The Agent for the Landlord stated that the Tenant responded to the email he sent on November 27, 2021. The Landlord submitted no evidence to corroborate this testimony.

The Agent for the Landlord stated that he and the Tenant regularly communicate via email and text message. The Landlord submitted no evidence to corroborate this testimony.

The Landlord submitted no evidence to establish that the Tenant provided the Landlord with permission to serve legal documents via email.

Analysis

The purpose of serving the Dispute Resolution Package to a tenant is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession pursuant to section 49.2 of the *Act*, the landlord has the burden of proving that the tenant was served with the Dispute Resolution Package in accordance with section 89(1) of the *Act*.

Section 89(1) of the *Act* permits a party to serve an Application for Dispute Resolution to the other party in 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* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

On the basis of the testimony of the Agent for the Landlord, I find that the Dispute Resolution package was served to the Tenant, by email, on November 27, 2021.

I find that the Landlord has submitted insufficient evidence to establish that the hearing documents were served to an email address provided by the Tenant for the purposes of serving documents. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence to establish that the email address was provided for the purposes of serving documents. As the Landlord has failed to establish that the email address was provided for the purposes of serving documents, I cannot conclude that

the hearing documents were served to the Tenant in accordance with section 89(1)(f) of the *Act*.

I find that the Landlord submitted insufficient evidence to establish that the Tenant received the documents the Agent for the Landlord emailed on November 27, 2021. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence to corroborate the submission that the Tenant responded to the email sent on that date. When such evidence is available, or could be available with reasonable effort, I find it should be submitted as evidence.

As there is insufficient evidence to determine that the Tenant received the Dispute Resolution Package, I cannot conclude that the hearing documents have been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord failed to establish that the Dispute Resolution Package has been properly served to the Tenant and/or received by the Tenant, I am unable to proceed with the hearing in the absence of the Tenant. The Application for Dispute Resolution is therefore dismissed, with leave to reapply.

Conclusion

The Application for Dispute Resolution is dismissed, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution. All future hearing documents must be served in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 04, 2022

Residential Tenancy Branch