



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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* 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 23 minutes. 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.

This hearing began at 1:30 p.m. and ended at 1:53 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 landlord and I were the only people who called into this teleconference.

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. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord’s Application

The landlord was required to serve the tenant with a copy of the landlord’s application, notice of hearing, and evidence, within three days of receiving it from the RTB, as per Rule 3.1 of the RTB *Rules of Procedure*. The landlord filed this application on June 19, 2021, and the notice of hearing is dated July 13, 2021.

The landlord testified that the tenant was served with the above documents on August 17, 2021, by registered mail to the tenant’s mother-in-law’s address. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. He said that the mail was delivered on August 23, 2021.

During the hearing, when I checked the Canada Post website using the tracking number that the landlord provided, it indicated that the mail was returned to sender on September 22, 2021. When I informed the landlord about this, he then claimed that he made a mistake and received his mail package returned to him.

I asked the landlord why he served the tenant at his mother-in-law’s address. In his online RTB application details, the landlord stated that the tenant “disappeared in March 2021.” The landlord provided a move-out condition inspection report with no signature from the tenant and no forwarding address indicated for the tenant. When I inquired about this, the landlord claimed that he did not have any contact with the tenant after the tenant left in March 2021. He then claimed that the tenant told him sometime in the year 2021, that he was moving to his mother-in-law’s house. He said that he could not remember the date or month that he was told this. He explained that he received an email with a reference letter, dated April 16, 2020, from the tenant’s mother-in-law, stating her address. He stated that the tenant’s “new girlfriend” used this letter when she moved into the rental unit without the landlord’s permission. He maintained that he did not provide a copy of this email or letter for this hearing. He claimed that he used the address from the letter in April 2020 to mail the landlord’s application documents to the tenant.

The landlord stated that he received an email from the RTB on July 13, 2021, with his application documents. He said that he was told by the RTB in that email, to serve his application documents to the tenant by July 16, 2021. He explained that when he called the RTB on August 17, 2021, he told the RTB information officer that he had not yet served his application to the tenant. He said that he was informed by the RTB information officer that service of his application was late, and he would be required to explain this to the Arbitrator, or he could reapply for his application. The landlord said

that when he was emailed by the RTB on December 22, 2021, asking if this hearing was still required, he emailed the RTB back to indicate that he still required this hearing.

I asked the landlord why he waited over a month to serve the tenant with his application on August 17, 2021, when he was informed by the RTB to serve it by July 16, 2021, as required by Rule 3.1 of the *RTB Rules of Procedure*. He said that his wife was in a car accident two years ago and he has to take care of her, so he was unable to serve his application to the tenant by the deadline. He confirmed that he did not provide any medical documentary evidence regarding his wife, to confirm the above information.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing** the date of service, the address of service, and that **the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report.

I find that the landlord did not serve the tenant with the landlord's application, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12.

I find that the landlord was unable to provide sufficient documentary proof of a current residential or forwarding address given by the tenant. The landlord used an address that he said was provided to him by the tenant's "new girlfriend" on April 16, 2020, over one year before the landlord filed this application on June 19, 2021. The landlord did not provide a copy of the reference letter or email to show this address. He did not provide documentary evidence to show that the tenant provided this as a forwarding or residential address and when. The landlord claimed it was sometime in 2021 but could not recall the date.

The landlord had ample time from filing this application on June 19, 2021, to this hearing date of January 13, 2022, to provide the above information. The tenant did not attend this hearing to confirm service.

Further, the landlord sent the above documents on August 17, 2021, more than one month beyond the 3-day deadline of July 16, 2021, contrary to Rule 3.1 of the RTB *Rules of Procedure*. I find that the landlord did not provide a sufficient explanation as to why he was late. The landlord did not provide documentary evidence of his wife's medical condition. The landlord referenced an event two years prior, involving his wife. The landlord voluntarily chose to file this application on June 19, 2021; he was not required or forced to do so. The landlord could have had an agent or lawyer assist him with his application and attend this hearing on his behalf, if he was unable to serve his application on time or pursue his application at this hearing. I informed the landlord about the above information during this hearing and he confirmed his understanding of same.

I notified the landlord that his application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed him that he could file a new application, pay a new filing fee, and provide proof of service at the next hearing, if he wants to pursue this matter further. He confirmed his understanding of 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: January 13, 2022

Residential Tenancy Branch