



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL-S, MNDCL

Introduction

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

- a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord attended the hearing, the tenant did not attend although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, their translators, wife and I were the only ones who had called into this teleconference.

All parties clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. Everyone confirmed that they understood.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution and Request to Adjourn Hearing

On August 19, 2021, the landlord was granted their application for a substituted service order. The Adjudicator made the following orders:

I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by e-mail to the tenant at the e-mail address indicated on the first page of this decision.

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 testified that although they received a copy of the substituted service decision on August 20, 2021, they did not check their email until February 2, 2022. The landlord then subsequently attempted to serve the tenant with the required documents on February 6, 2022.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was February 6, 2022.

The landlord did not supply the required documents accordance with RTB Rule 3.14 and as ordered by the Adjudicator. Furthermore, despite the fact that the landlord was granted the substituted service order on August 19, 2021, they did not attempt to serve the tenant by email until February 6, 2022.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *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].

As the tenant did not attend the hearing to confirm that they were aware of the hearing date and time, or calling instructions to attend the teleconference call, and in the absence of the proof of service documents that should have been submitted by the landlord before the hearing, I find that the landlord has failed to provide sufficient evidence to support that their application package was served in accordance with section 89 of the Act. I therefore dismiss the landlord's entire application with leave to reapply. Liberty to reapply is not an extension of any applicable time limits.

During the hearing, the landlord requested an adjournment in order to re-serve the tenant with their application and evidentiary materials.

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I am not satisfied that that the adjournment request meets the criteria as set out above. I find that the landlord was provided ample time to ensure that they had served the tenant before the hearing date, but waited over four months to do so. Furthermore, the landlord failed to follow the instructions as provided in the substituted service decision dated August 19, 2021. These rules ensure that a respondent is given the opportunity to respond if they chose to do so. The tenant was not in attendance at the hearing to confirm that they were indeed served with any of the required documents. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, the landlord's request for an adjournment was not granted.

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: February 17, 2022

Residential Tenancy Branch