



Dispute Resolution Services

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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 1:54 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 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 applied on August 19, 2021 for an authorization for substitute service asking to serve the materials to the email address ****m*****@****.com (the M email address). The landlord submitted a print-out of an email received from the tenant using the M email address on August 13, 2021.

The landlord was authorized to serve the notice of hearing, the evidence and the substitute service decision (the materials) by email to the email address

****n*****@****.com (the N email address). Both email addresses are recorded on the cover page of this decision. The substitute service decision dated August 24, 2021 states:

For substitute service by e-mail to: the N email address

For this reason, 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.

Conclusion

The landlord is granted an order for substituted service. The landlord may serve the tenant the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenant's e-mail address as set out above.

(emphasis added)

The landlord affirmed he served the materials by email on August 30, 2021 to the N email address and the tenant did not reply. I asked the landlord to confirm the email address and the landlord confirmed he sent the email to the N email address. Later the landlord affirmed he served the email to the M email address.

The landlord submitted into evidence a file named "proof_of_service_by_email_2021-08-30.txt" (the proof of service) indicating the sent the material to the M email address. The landlord affirmed: "I believe that I copied the information from the email sent to the proof of service file and submitted this file to the Residential Tenancy Branch".

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's testimony about the email address used for service was contradictory and vague ("I believe that I copied the information from the email sent to the proof of service file and submitted this file to the Residential Tenancy Branch"). I find the proof of service document submitted by the landlord and the landlord's contradictory

and vague testimony do not prove, on a balance of probabilities, which email address the landlord used to serve the materials. Thus, I find the landlord failed to prove service of the materials in accordance with the Act.

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.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

Conclusion

I dismiss the application 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: March 04, 2022

Residential Tenancy Branch