



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant 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 tenant and I were the only ones who had called into this teleconference.

The tenant confirmed his email address for service of this decision.

The tenant testified that he did a title search on the subject rental property and attended at the landlord's property to serve the landlord with a copy of this application for dispute resolution. The title search was not entered into evidence. The tenant testified that he attended at the landlord's property and personally served the person who answered the door, with a copy of the tenant's application for dispute resolution. The tenant testified that the landlord did not open the door. The tenant entered into evidence a voice recording of the above alleged service.

The voice recording states:

Tenant: Hello

Unknown Person: Yes

Tenant: [First name of landlord]? [First name of landlord] here?

Unknown Person: No, no he's not.

Tenant: Ok. Does he live here?

Unknown Person: Ya [inaudible].

Tenant: This, this is for him.

Unknown Person: ok

Tenant: It's just a package for him. OK. Thank you sir. You have a great day.

Unknown Person: ok

Section 89(1) of the *Act* sets out the approved methods of service for an application for dispute resolution as follows:

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*];
- (f)by any other means of service provided for in the regulations.

Leaving a copy of the application for dispute resolution with a person who apparently resides with the landlord, is not a method of service approved under section 89(1) of the *Act*. I find that there was no evidence to suggest that the person who answered the door was an agent for the landlord. I find that since the landlord was not served in

accordance with section 89(1) of the *Act*, the tenant's application for dispute resolution is dismissed with leave to reapply.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

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.

I also note that the audio recording entered into evidence is not sufficient to prove service as it does not contain the date, the full name of the person serving or being served and does not mention what documents are being served. When documents are served personally, witnessed proof of service documents that state the date, time and location of delivery, name of the server, name of the party being served, and the type of documents served, are useful in proving service. For failure to prove service, the tenant's application is dismissed with leave to reapply.

The tenant was cautioned at a future hearing to prove service of the tenant's application for dispute resolution in accordance with section 89(1) of 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 *Residential Tenancy Act*.

Dated: March 10, 2022

Residential Tenancy Branch