



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

Introduction

This hearing was convened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee of this application from the Tenant.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 10:08 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. A representative for the Landlord ("LM") 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 Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that LM and I were the only ones who had called into this teleconference.

Preliminary Matter – Service of NDRP on Tenant

LM testified the Landlord served the NDRP and the Landlord's evidence ("NDRP Package") on the Tenant by Canada Post Xpresspost on November 17, 2021. LM submitted a tracking number corroborate her testimony the NDRP Package was served by the Landlord on the Tenant.

Section 89 of the Act states:

- 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.

In this type of matter, the Landlord must prove they served the Tenant with the Notice of Direct Request Proceeding and supporting documents in accordance with section 89 of the *Act* which permits service "by sending a copy by registered mail to the address at which the person resides".

Section 1 of the *Act* defines registered mail as "includes any method of mail delivery provided by Canada Post *for which confirmation of delivery to a named person is available*" [emphasis in italics added].

I find the tracking information provided by LM is for packages sent by Canada Post Xpresspost, which may or may not require a signature to confirm delivery to the Tenant. In this case, I accessed Canada Post's online tracking information and confirmed that a signature of the addressee was not available or was not requested. As a result, I find it is not possible to confirm delivery of the NDRP to the Tenant. Based on the above, I find this mail service on the Tenant did not meet the definition of registered mail under section 1 of the *Act*.

Since I find that the Landlord has not served the Tenant with the NDRP and supporting documents in accordance with sections 1 and 89 of the *Act*, I dismiss the Landlord's application for an order of possession and a monetary order for unpaid rent with leave to reapply.

As the Landlord was not successful in this application, I find the Landlord's request to recover the \$100.00 filing fee is dismissed without 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 4, 2022

Residential Tenancy Branch