



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 17, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30PM on April 11, 2022 as a teleconference hearing. The Tenant appeared and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 13 minutes before the call ended. 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 the Tenant and I were the only persons who had called into this teleconference.

At the start of the hearing, the Tenant stated that she served the Notice of Hearing and documentary evidence to the Landlord by Registered Mail on December 30, 2021. The Tenant stated that she sent the package to the dispute address where the Landlord collects mail from. The Tenant stated that the Landlord rents the upper and lower portions of the home and he lives elsewhere. The Tenant acknowledged that she did not send the Notice of Hearing or documentary evidence to the Landlord's address for service which is listed on the tenancy agreement between the parties.

The Tenant stated that she also sent the Notice of Hearing to the Landlord via email. The Tenant stated that they had conversed throughout the tenancy via email, however, the Tenant acknowledged that the Landlord did not provide his email to the Tenant for the purpose of serving tenancy related documents.

Preliminary Matters - Service

According to Section 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 case, the Tenant provided a copy of the tenancy agreement which names a Landlord and an address for service for the Landlord. The Tenant served the Notice of Hearing to the dispute address which is not where the Landlord resides, or where the Landlord carries on business as a Landlord. I find that the Tenant did not serve a copy of the Notice of Hearing to the Landlord's address for service in accordance with Section 89 of the *Act*.

With respect to email being used for service of documents;

According to Residential Tenancy Regulation Section 43 (2) For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

According to the Residential Tenancy Policy Guideline 12;

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method. If no other method of service is successful, a party may apply for a substituted service order (RTB-13 - Application for Substituted Service), asking for an order allowing service by email, and provide evidence of a history of communication between the parties at that email address.

I accept that the Landlord did not provide the Tenant with an email as an address for service. As such, I find that the Tenant is not permitted to serve the Landlord using this method. Seeing as the Tenant has the Landlord's address for service, the Tenant is at liberty to reapply and serve documents to the Landlord at the address for service listed on the tenancy agreement.

Conclusions

I find that the Landlord was not sufficiently served with the Notice of Hearing pursuant to Section 89 of the *Act*. As such, the Tenant'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: April 11, 2022

Residential Tenancy Branch