



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. 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.

This hearing began at 1:30 p.m. and ended at 1:50 p.m. I monitored the teleconference line throughout this hearing. 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 I was the only person who called into this teleconference.

The landlord confirmed his name and spelling. He provided the rental unit address. He said that he owns the rental unit. He provided his mailing address for me to send this decision to him after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He did not make any adjournment or accommodation requests.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the postal code in his mailing address. The landlord requested this amendment during this hearing. I find no prejudice to the tenant in making this amendment.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package by way of registered mail on November 1, 2021. The landlord provided a Canada Post tracking number verbally during this hearing. He said that he did not know if the tenant received the above mail, but he did not get the package returned to sender.

The landlord said that the mail was sent to a forwarding address provided by the tenant in a text message on October 13, 2021. He provided a copy of a cellular phone screenshot photograph, which he labelled was from October 13, 2021. When I read aloud the contents of the text message that the landlord labelled for October 13, 2021, he claimed it was the wrong message. He said that maybe he got the dates wrong when he labelled his evidence and uploaded it online to the RTB website, but he would have to turn on his old phone to find out. He stated that the only other text message he provided was from September 20, 2021.

The landlord agreed that there were no dates in the two text messages that he provided but said that he labelled them with dates when he uploaded the evidence to the online RTB website. He agreed that there were no names in the text messages, but he said they were conversations between him and the tenant. He stated there was a phone number at the top of the text messages. He claimed that one of the text messages had the tenant's name and forwarding address in the body of the text message, so it was clearly from the tenant.

The landlord was upset and argumentative throughout this hearing. He repeated the same testimony and questions about service. He repeatedly read aloud the same text message during this hearing. He repeatedly indicated that he spent \$15.00 to mail his application to the tenant and he must have got it, since it was not returned to sender. He stated that he had a hearing in Small Claims Court with the tenant, two days prior to this hearing, where the tenant claimed bankruptcy. He said that the Judge believed the tenant's story. He claimed that he told the tenant about this hearing today, but the tenant refused to pay him for damages.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

89 (1) An application for dispute resolution ..., 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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

***Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

I find that the landlord did not provide sufficient evidence that he served the tenant with the landlord's application, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12.

The landlord did not provide a Canada Post receipt or a tracking report with this application to confirm service, as per Residential Tenancy Policy Guideline 12, above.

I find that the landlord was unable to provide sufficient documentary proof of a forwarding address given by the tenant or when the landlord obtained this address. The two text messages provided by the landlord do not indicate the dates, names, or the numbers they were sent to. The text message that the landlord claimed had a

forwarding address, does not have a complete address with a “street,” “road,” “crescent” or “avenue” to identify the area. The landlord did not confirm his phone number or the tenant’s phone number during this hearing. The same phone number that is listed at the top of both text messages from September 20, 2021 and October 13, 2021, is different than the two phone numbers that the landlord listed for himself and the tenant in the landlord’s online application for dispute resolution. The landlord testified that the text message with the tenant’s forwarding address is from October 13, 2021, but he labelled it as September 20, 2021, in his online evidence that he uploaded and labelled himself. The landlord claimed that there may have been an error in his labelling of the dates for the text messages, but he had to look it up on his old phone, which he did not do during this hearing.

The landlord had ample time from filing this application on October 27, 2021, to this hearing date of May 27, 2022, a period of approximately 7 months, to provide correct, complete, and sufficient evidence regarding service of his application to the tenant. The tenant did not attend this hearing to confirm service.

I notified the landlord that his application was dismissed with leave to reapply, except for the filing fee. I informed him that he could file a new application and pay a new filing fee, if he wants to pursue this matter further.

The landlord was upset and argued when I provided him with my decision verbally during this hearing. I repeatedly informed the landlord about the above reasons for my decision. I thanked the landlord for attending and closed the hearing.

Conclusion

The landlord’s application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord’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: May 27, 2022