



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

The Landlord applies for an order for unpaid rent pursuant to s. 67 of the *Residential Tenancy Act* (the “Act”) and claims this against the security deposit. She also seeks the return of her filing fee pursuant to s. 72 of the *Act*.

P.K. appeared as the Landlord. The Tenant did not appear, nor did someone appear on their behalf.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advises that she was not provided a forwarding address by the Tenant at the end of the tenancy. However, I was told that she obtained the Tenant’s address from a third-party, though she admits that she cannot confirm that the Tenant resides at that address. The Landlord says she sent the Notice of Dispute Resolution and her evidence to the address which the third-party purports is the Tenant’s new address.

I reviewed the tracking information provided by the Landlord, which indicates the package was picked up on March 3, 2022. However, I cannot verify who signed to retrieve the package.

Rule 3.1 of the Rules of Procedure requires an applicant to serve the Notice of Dispute Resolution on all the application respondents. Further, Rule 3.5 requires an applicant to demonstrate service of the application at the hearing. These rules are in place to ensure

that application respondents can review the case being made against them and provide a response.

I find that I am unable to confirm that the Landlord served the Tenant with the application. The Landlord admits that she cannot confirm that the Tenant resides at the address where the registered mail package was sent. The registered mail package was retrieved based on the tracking information, though I cannot confirm by whom. I decline to use the deeming provisions under s. 90 of the *Act* as it would be inappropriate to do so as there is no confirmation of the Tenant's mailing address.

Policy Guideline 12 provides guidance with respect to the service provisions of the *Act* and indicates that when an application has not been served, the hearing may proceed, be adjourned, or dismissed with or without leave to reapply. I find that to proceed with the application when service cannot be confirmed would be procedurally unfair to the Tenant, who has a right to know the case against them and respond. The appropriate course is for the Landlord to reapply and, if necessary, seek an order for substitutional service.

I dismiss the Landlord's claim for unpaid rent with leave to reapply. The Landlord's claim for the return of her filing fee is dismissed without leave to reapply.

No findings of fact or law are made. This dismissal does not extend any time limitation that may apply under 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: May 13, 2022

Residential Tenancy Branch