



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:50 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. 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. 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The landlord stated she served the notice of hearing and the evidence (the materials) by registered mail on October 01, 2021. The tracking number and the address are recorded on the cover page of this decision.

The landlord testified the tenant moved out on August 15, 2021 and did not provide a forwarding address. The landlord mailed the materials to the rental unit's address and supposes that Canada Post forwarded it to the tenant's forwarding address, as the

tenant received the package and signed for it on October 18, 2021. The landlord submitted the signed receipt issued by Canada Post on October 25, 2021.

The landlord submitted a notice issued by Canada Post:

Confirmation of Service. Mail Forwarding / Hold Mail Service.
Expires 2022/08/26. [tenant]+[tenancy address]

The landlord contacted the tenant after she served the materials, but the tenant did not answer.

Section 89(1)(c) and (d) of the Act states:

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:

- (c) by sending a copy by registered mail to the address at which the person resides
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

Residential Tenancy Branch Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

The notice of confirmation of service from Canada Post indicates the mail forwarding or hold mail service expired on August 26, 2022 and the landlord mailed the materials on October 01, 2021. I find the landlord did not mail the materials to the tenant's forwarding address. I find that the landlord does not know the tenant's forwarding address and is supposing that Canada Post delivered the materials to the forwarding address that may have been provided to Canada Post.

As such, I find the landlord did not serve the notice of hearing in accordance with section 89(1) of the Act.

I dismiss the landlord's application with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee.

After I explained my decision, the landlord affirmed the law protects the tenants and it is not fair that this application did not proceed.

Conclusion

The landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable timeline.

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 18, 2022

Residential Tenancy Branch