



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order of \$1,200.00 for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits") totalling \$1,200.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 8 minutes. The landlord's agent 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. with only me present. The landlord's agent called in late at 1:31 p.m. This hearing ended at 1:38 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 the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name and spelling. She said that the landlord company ("landlord") named in this application is a property management company for the owner of the rental unit. She said that she had permission to represent the landlord and the owner at this hearing. She provided the rental unit address. She provided her email address for me to send this decision to the landlord after the hearing.

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

I explained the hearing process to the landlord’s agent. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

During this hearing, I informed the landlord’s agent that she was provided with additional time to type and look up information on her computer, in order to search the landlord’s application and evidence. The landlord’s agent requested this additional time for the above reasons, during this hearing.

Preliminary Issue – Service of Landlord’s Application

The landlord’s agent testified that the tenant was served with the landlord’s application for dispute resolution hearing package, by way of registered mail, on November 12, 2021. The landlord provided a Canada Post receipt with this application. The landlord’s agent confirmed the Canada Post tracking number verbally during this hearing.

The landlord’s agent said that the above documents were sent to a forwarding address provided by the tenant in a condition inspection report. She did not indicate the date that this forwarding address was provided.

I informed the landlord’s agent that I did not receive a copy of the condition inspection report, or any document entitled condition inspection report, with the landlord’s application evidence. The landlord’s agent asked that I check whether the condition inspection report was attached to the tenancy agreement submitted as evidence by the landlord. I checked the landlord’s two separately uploaded tenancy agreements on the online RTB application database, and informed the landlord’s agent that both documents only included the parties’ written tenancy agreements, rules, and addendums.

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 serve the tenant with the landlord's application, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12.

I informed the landlord's agent that the landlord failed to provide documentary proof of a residential address or a forwarding address provided by the tenant and when that address was given to the landlord. I notified her that the landlord did not provide a copy of the condition inspection report, that she claimed contained the tenant's forwarding address, as evidence for this hearing. Upon review of the landlord's application evidence, the landlord did not provide any other documents containing the tenant's residential or forwarding address. The landlord did not provide a copy of the Canada Post tracking report, as evidence for this hearing, as per Residential Tenancy Policy Guideline 12 above.

The landlord's agent asked whether she could provide the condition inspection report after this hearing. I informed her that the landlord could not provide evidence after this hearing. The tenant would not have notice or a chance to respond to same. I notified the landlord's agent that the landlord had ample time from filing this application on

November 8, 2021, to this hearing date of June 13, 2022, a period of over 7 months, to provide the above evidence. The tenant did not attend this hearing to confirm service.

I notified the landlord's agent that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed her that the landlord could file a new application and pay a new filing fee, if the landlord wants to pursue this matter in the future. She confirmed her understanding of same.

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: June 13, 2022

Residential Tenancy Branch