



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlord's two agents, landlord ID ("landlord's agent") and "landlord AB," attended the hearing and were each 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 1:58 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 two agents and I were the only people who called into this teleconference.

At the outset of this hearing, I asked the landlord's agent to remove her telephone from speakerphone because I had difficulty hearing her and there was echoing and feedback. She asked to call back in using a different cellular phone. I permitted her to exit and call back into the hearing at 1:32 p.m.

The landlord's agent confirmed the names and spelling for her and landlord AB. She provided her email address for me to send this decision to the landlord after the hearing. She identified herself as the primary speaker on behalf of the landlord at this hearing.

Landlord AB did not testify at this hearing, although I informed the landlord's agent that she could do so.

The landlord's agent stated that she was the property manager for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She said that landlord AB is an associate broker for the landlord and that she had permission to speak on its behalf. She said that the landlord is an agent for the owner of the rental unit. She stated that she and landlord AB had permission to represent the owner. She confirmed the rental unit address.

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. I informed her that I could not provide legal advice to her or act as her agent or advocate. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord's Application

The landlord's agent testified regarding the following facts. The tenant was served with the landlord's application for dispute resolution hearing package on January 21, 2022, by way of email, as per a substituted service decision, dated December 30, 2021, made by an Adjudicator ("SS decision"). The SS decision and all other documents were sent to the tenant in the same email on the above date. The landlord submitted proof that the tenant read the email on the same date. The tenant responded to the landlord's agent's email on February 11, 2022. The landlord's agent responded to the tenant's email on February 22, 2022. The landlord provided a copy of the above emails with this application.

The landlord's agent stated the following facts. The tenant moved out of the rental unit on September 22, 2020 and he did not provide a forwarding or residential address to the landlord. The landlord's agent sent an email to the tenant on November 17, 2021, to pick up a package and he said he did not need it. The package was not related to this application. The landlord's agent filed this application on November 25, 2021. She filed a substituted service application on December 7, 2021. She received a notice of hearing, dated November 30, 2021, from the RTB on the same date, and she was told by the RTB to serve the tenant by December 3, 2021, with the landlord's application.

She called the RTB on January 17, 2022 and spoke to an RTB information officer. She told the RTB that she had not yet served the tenant with the landlord's application, as of the above date. She was told by the RTB that she did not apply for substituted service with the original application, and she was required to serve the tenant with the landlord's application by December 3, 2021. She was told by the RTB that she could either withdraw this application and reapply or serve the landlord's application late and let the Arbitrator decide at the hearing. She got mixed up by the different dates, so that is why she served the landlord's application late to the tenant on January 21, 2022, after receiving the SS decision on December 30, 2021.

Section 89(1) of the *Act* states the following (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];*
- (f) by any other means of service provided for in the regulations.***

Section 43(2) of the *Regulation* states the following (my emphasis added):

*(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.***

At page 3 of the SS decision, the Adjudicator stated (emphasis in original):

I order the landlord to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with

this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

...

The landlord is granted an order for substituted service. The landlord may serve the tenant the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenant's e-mail address as set out above.

The landlord's "service email" does not indicate the tenant's specific email address on it. It just states the tenant's full name in the field indicating who the email was sent "to." It does not indicate the landlord's email address in the field indicating who the email was sent "from," it just states the landlord's full name.

The landlord's service email does not include a copy of all attached documents that the landlord listed in the email. It simply indicates "RTO package" and there is one PDF attachment, so I cannot determine which specific documents were actually included in the attachment.

I find that the landlord did not provide sufficient proof of service of the landlord's application to the tenant by way of email to the tenant's specific email address. The landlord did not provide a copy of an email, confirming service to the tenant's specific email address, indicating who it was sent to. The above SS decision requires service: "to the tenant's email address as set out above." The tenant's specific email address is listed on the cover page of the SS decision. I find that the landlord did not provide proof, as required by Regulation 43(2) which requires: "emailing a copy to an email address provided as an address for service by the person."

I find that having the tenant's full name appear in the "to" field of the email does not confirm that the correct email address was used for the tenant, as directed in the SS decision. The landlord's service email could have been sent to any email address, which may not be the correct one, as directed in the SS decision. The landlord's proof of reading the email does not indicate the tenant's email or name anywhere on the document. It indicates that the email was sent to the landlord's agent's name, not the tenant's name or email.

The landlord's service email does not describe or provide a full copy of all of the attached documents that were attached to the landlord's email and sent to the tenant. The landlord provided one attachment of a PDF document entitled "RTO package." Although there is a list of the documents in the body of the email, I cannot confirm that

all required documents were contained in the one attachment. Therefore, I cannot confirm whether the application for dispute resolution, notice of hearing, SS decision, and all other evidence were served to the tenant in the landlord's service email. Although the landlord provided an email response from February 11, 2022, claiming that the tenant responded, I cannot confirm the documents that were actually attached to the email, as they are not specifically referenced in the response.

The landlord had ample time to provide the above evidence for this hearing, considering that this application was filed on November 25, 2021, and this hearing occurred on June 27, 2022, over 7 months later. The tenant did not appear at this hearing to confirm receipt of the above documents.

I informed the landlord's agent of the following information, during this hearing. The landlord was required to serve the tenant with a copy of the landlord's application, notice of hearing, and evidence, within three days of receiving it from the RTB, as per section 59(3) of the *Act* and Rule 3.1 of the *RTB Rules of Procedure*. The landlord was required to serve the tenant with the landlord's application by December 3, 2021, as per the RTB email to the landlord on November 30, 2021, and failed to do so. Even after the landlord received the SS decision on December 30, 2021, the landlord failed to serve the tenant in a timely manner. The landlord's agent was informed by the RTB on January 17, 2022, more than 5 months prior to this hearing on June 27, 2022, that the landlord's substituted service application was not made at the time the original application was filed and service of the landlord's application was late. Yet, the landlord still waited until January 21, 2022, more than 1.5 months after the December 3, 2021 deadline, to serve this application to the tenant, contrary to section 59(3) of the *Act* and Rule 3.1 of the *RTB Rules of Procedure*.

Accordingly, I find that the landlord failed to prove service in accordance with section 89 of the *Act*, section 43(2) of the *Regulation*, and the SS decision. I find that the tenant was not served with the landlord's application for dispute resolution, notice of hearing, SS decision, and evidence. I find that the landlord did not serve the tenant within 3 days, by December 3, 2021, or within a timely manner after receiving the SS decision on December 30, 2021, as required by section 59(3) of the *Act* and Rule 3.1 of the *RTB Rules*.

During this hearing, I informed the landlord's agent that I was dismissing the landlord's application with leave to reapply, except for the filing fee. I notified 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.

During this hearing, the landlord's agent stated that she intends to file a future application against the tenant. The landlord is cautioned about limitation dates as per section 60 of the *Act*, given that this tenancy ended on September 22, 2020.

During this hearing, the landlord's agent expressed concern about using the above SS decision for service. The landlord is cautioned about using the same SS decision to email application documents to the tenant, given that the SS decision was made on December 30, 2021, and it may not be relevant to a future application.

During this hearing, I repeatedly informed the landlord's agent that I could not provide legal advice to her, regarding the above information. She affirmed 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 27, 2022

Residential Tenancy Branch