



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, 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 18 minutes. The landlord and the landlord's lawyer 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 11:00 a.m. and ended at 11:18 a.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, the landlord's lawyer, and I were the only people who called into this teleconference.

The landlord and his lawyer provided their names and spelling. The landlord confirmed that he owns the rental unit and provided the rental unit address. He provided his email address for me to second this decision to him after the hearing. He confirmed that his lawyer had permission to speak on his behalf at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by any party. The landlord and his lawyer both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process and the potential outcomes and consequences to the landlord and his lawyer. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord’s Application

The landlord’s lawyer stated that the tenant was served with the landlord’s application for dispute resolution hearing package on April 27, 2022, by registered mail. He provided a Canada Post tracking number verbally during this hearing. He referenced a Canada Post receipt and tracking report that the landlord provided with this application.

During the hearing, when I checked the Canada Post tracking report that the landlord provided, it indicated on April 28, 2022: “Verifying recipient’s address; Possible delay” and on May 2, 2022: “Recipient not located at address provided. Item being returned to sender.” On May 5, 2022, the report states: “Item being returned to sender. Incomplete address” and on May 16, 2022: “Item on hold at a secure facility; contact Customer Service.” There are no further notes after the above date of May 16, 2022. I read aloud the above information to the landlord and his lawyer during this hearing, and they agreed that the Canada Post tracking report indicates the above information.

The landlord stated that his friend called Canada Post and was told verbally that the mail was refused. He claimed that he provided notes of this telephone conversation as evidence for this hearing. I informed him that the handwritten notes provided do not indicate that the mail was refused. The notes only indicate the landlord’s and tenant’s names, their phone numbers, their addresses, and references to May 18, 2022, with a service ticket number.

The landlord claimed that he was told by a representative at the RTB that he was not required to serve a new notice of rescheduled hearing to the tenant, which is dated May 24, 2022. The landlord agreed that he was told by this representative that he was required to provide proof of refused mail with his application evidence for this hearing.

Residential Tenancy Policy Guideline 12 states the following, in part (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 tenant was not served with the landlord's original application for dispute resolution, notice of hearing dated April 27, 2022, and evidence, as per section 89 of the *Act* and Rule 3.1 of the *RTB Rules*. The Canada Post tracking report provided by the landlord indicates that the registered mail was not delivered, no signature was recorded, no item was unclaimed or refused for service, and no further notes were made after May 16, 2022. The handwritten notes provided by the landlord do not indicate that Canada Post informed the landlord that the mail was refused. Therefore, service cannot be deemed on the tenant and delivery to a named person cannot be confirmed as per Residential Tenancy Policy Guideline 12 above.

Accordingly, the landlord's application is dismissed with leave to reapply, except for the \$100.00 filing fee, which is dismissed without leave to reapply.

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 06, 2022

Residential Tenancy Branch