



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, 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 unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:07 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, represented by property manager DZ (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 all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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 affirmed that he learned the tenant abandoned the rental unit in early April 2021 and did not provide the forwarding address. The landlord texted the tenant about a package that arrived at the rental unit in May 2021:

Tenant: Yeah... I was there yesterday. They said they had nothing and sent back all my stuff. Can you mail to my grandma? Or can I pick up next week?

Landlord: It was in the mail box, so the concierge doesn't have access. What's your grandma's address? I'll send it there.

Tenant: [recorded on the cover page – hereinafter the "recorded address"]

Landlord: Ok Thanks. That'll get to you then?

Tenant: Yup.

Landlord: Thanks

I inquired the landlord when he received the text messages above recorded and he answered: "something like May 2021".

The landlord submitted this application on February 08, 2022 and applied for an order for substituted service on the same date, seeking to serve the tenant with the notice of hearing via email. The landlord stated:

Justification that current methods will not work: The tenant left the property and will not provide us with the address they moved to. We have communicated by phone, text and email but are unable to see them in person or get their new address.

The request for substituted service was denied on February 24, 2022.

The landlord stated he mailed the notice of hearing and the evidence (hereinafter "the materials") to the tenant on March 11, 2022. The landlord mailed the materials to the recorded address.

The landlord testified the only address he is aware of the tenant is the recorded address.

I inquired the landlord if the recorded address is the tenant's forwarding address. The landlord said the recorded address is the only address he has.

I inquired the landlord why he applied for an order for substituted service on February 08, 2022 to serve the materials via email and did not serve the materials to the recorded

address. The landlord affirmed he did not know what to say in the application for substituted service.

Residential Tenancy Branch Policy Guideline 12 states:

Any applicant for dispute resolution must provide an address for service. This could be a home, business or other address that is regularly monitored.

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.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

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.

(emphasis added)

The text messages submitted only contain part of the conversation and are not dated.

I find the landlord's testimony about the text messages was vague. The landlord was not able to explain why he received the recorded address in "something like May 2021", submitted this application on February 08, 2022 and asked for an authorization to serve the materials via email to later serve the materials to the recorded address.

I find the text message with the recorded address does not clearly state that the address provided is an address the tenant regularly monitors or resides.

Section 89(1) 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:

(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.

Considering all the above, I find the landlord failed to prove that he served the materials to the tenant's forwarding address, as required under section 89(1)(c) of the Act.

The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

As such, I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

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

Conclusion

I dismiss the landlord's application 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: October 07, 2022

Residential Tenancy Branch