



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and to retain all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that on March 23, 2022 the Dispute Resolution Package was served to the Respondent's daughter, who lives at the rental unit. The Landlord submitted a Proof of Service, which appears to be signed by the Respondent's daughter, which corroborates this testimony.

The Agent for the Landlord stated that the Landlord and the Respondent entered into a written tenancy agreement. She stated that the Respondent never lived in the rental unit and that he rented it for his daughter, who occupied the unit.

Analysis

The purpose of serving the Dispute Resolution Package to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to

respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Residential Tenancy Act (Act)* permits a party to serve an Application for Dispute Resolution to the other party in 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 *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

On the basis of the testimony presented, I find that the Respondent was not personally served with the Dispute Resolution Package. I therefore cannot conclude that the Dispute Resolution Package was served to the Respondent in accordance with section 89(1)(a) of the *Act*.

On the basis of the testimony presented, I find that the Dispute Resolution Package was personally served to the Respondent's daughter. This is not a method of service permitted by section 89(1)(a) of the *Act* and I therefore find that it does not establish that the Respondent was properly served with the Dispute Resolution Package.

The Landlord submitted no evidence that the Dispute Resolution Package was sent to the Respondent by registered mail. I therefore cannot conclude that the Dispute Resolution Package was served to the Respondent in accordance with sections 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Dispute Resolution Package to the Respondent in an alternate manner. I therefore cannot conclude that the Dispute Resolution Package was served to the Respondent in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to show that the Respondent received the Dispute Resolution Package. I therefore cannot conclude that the Dispute Resolution Package has been sufficiently served to the Respondent, pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the Respondent was served with the Dispute Resolution Package in accordance with section 89(1) of the *Act*, I am unable to proceed with this matter in the absence of the Respondent. The Application for Dispute Resolution is therefore dismissed, with leave to reapply.

The Landlord retains the right to file another Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution 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 *Act*.

Dated: November 15, 2022

Residential Tenancy Branch