



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LMS2188
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

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

1. An Order for the Landlord to recover money for unpaid rent – holding the security deposit pursuant to Sections 38, 62 and 67 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, DH, and the Tenant, KM, and Legal Advocate, LH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord's Representative testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package on an unknown date by Canada Post registered mail (the "NoDRP package"). The Landlord neither uploaded nor verbally provided the Canada Post registered mail receipt with tracking number as proof of service. The Tenant did not confirm receipt of the NoDRP package. Neither the Landlord Representative nor the Agent was able to produce the tracking number for this package.

RTB Rules of Procedure 3.5 states:

3.5 Proof of service required at the dispute resolution hearing: *At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.*

RTB Policy Guideline #12-Service Provisions assists parties understand the requirements of service of documents. Parts 3 and 5 of the RTB Policy Guideline #12 outline special requirements for service of documents and service of documents generally.

The Landlord's Representative stated they also served their NoDRP package by email on an unknown date. The Landlord's Representative stated they do not have an agreement to serve legal documents by email. The Tenant did not confirm receipt of the NoDRP package by email. The Landlord's Representative did not upload the sent email report demonstrating the documents sent by email. I note also I do not see an email address for service for the Tenant was not provided in the tenancy agreement or via form #RTB-51-Address for Service. The Tenant testified that he was made aware of this hearing date by a reminder email that was sent to him from the RTB. Section 43(1) of the *Residential Tenancy Regulation* allows service via email if an email address was provided for this purpose. RTB Policy Guideline #12 says:

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. A person who does not regularly check their email should not provide an email address to the other party for service purposes.

A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 -"Address for Service" form and provide it to the other party.

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is

not advisable to use email as a service method. ... Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.

I find the Landlord has failed to provide any proof that the NoDRP package and evidence were served on the Tenant by any method provided in Sections 88 and 89 of the Act. I therefore decline to consider the Landlord's NoDRP package and evidence adequately served on the Tenant and I dismiss the Landlord's application with leave to re-apply.

Conclusion

The Landlord's Representative and Agent did not prove service of the NoDRP package and evidence. The Landlord's application is dismissed with leave to re-apply.

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: December 12, 2022

Residential Tenancy Branch