



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

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1:30 p.m. and ended at 1:55 p.m. 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.

The landlord was present for the hearing.

Preliminary Issue

As the tenant did not attend the hearing, I asked the landlord to confirm she sent the tenant a copy of the Notice of Dispute Resolution Proceedings package. The landlord testified that an adjudicator had declined her requests to send the Notice of Dispute Resolution Proceedings package to the tenant via email as the email address was not recently used. The landlord testified that she texted the tenant asking for a new address so that she could deliver unclaimed mail to her, and the tenant responded by telling the landlord to give her mail to the next-door neighbour. The tenant called the

police on the landlord for holding the tenant's mail. The landlord testified that she asked the tenant again for her forwarding address and the tenant gave it to her via text message (date unknown).

On August 19, 2022, the landlord filed a form #RTB-420 [*Amend and application for dispute resolution: change address, Add/remove an applicant, remove a claimant*] to show a change of address for the tenant. The landlord testified that on August 19, 2022, she sent the tenant the Notice of Dispute Resolution Proceedings package via registered mail to the address of the tenant obtained in the text message. The tracking number for the mailing is recorded on the cover page of this decision.

With the landlord's permission, I looked up the tracking number on Canada Post's website and determined the package was returned to sender on September 13, 2022 after being unclaimed by the recipient.

Analysis

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure 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.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

Special rules for certain documents

89 (1)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.

Residential Tenancy Branch Policy Guideline PG-12 [service provisions] states:

All parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the hearing being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

...

Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant

The landlord testified that the tenant provided her with a forwarding address via text message but did not provide a copy of the text into evidence for this hearing. During the hearing, the landlord could not provide a date the text was sent or read the passage of the text message to me. Further, I note that the Notice of Dispute Resolution Proceedings package was not claimed by the tenant at the address where the landlord sent it.

Based on the lack of supporting evidence, I am not satisfied the landlord has sufficiently demonstrated to me she served the tenant with the Notice of Dispute Resolution Proceedings package in accordance with section 89 of the Act. The landlord did not supply a copy of the text message into evidence or read the contents of the text message into the record to sufficiently satisfy me the tenant had provided her with a forwarding address. As such, I dismiss this application with leave to reapply.

I note that at the conclusion of the hearing, the landlord sought my opinion about whether I would accept a copy of the text message as adequate notice of a forwarding address at a future hearing. As I told the landlord during the hearing, I decline to offer an opinion as to do so would be contrary to the principles of procedural fairness and bring the administration of justice into disrepute. Such a determination is at the sole discretion of the arbitrator hearing the future application, should the landlord choose to file another application.

Conclusion

This 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: January 31, 2023

Residential Tenancy Branch