



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, MNDCL, FFL**

Introduction

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

- A monetary order for damages caused by the tenant or the tenant’s guests pursuant to sections 7 and 67;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord LB attended the hearing and was accompanied by her counsel, AB. The tenant did not attend this hearing scheduled for 1:30 p.m. although the teleconference connection was left open throughout the hearing that ended at 1:45 p.m. As the tenant did not attend, I asked the landlord whether the tenant was served with the Notice of Dispute Resolution Proceedings package.

Preliminary Issue

The landlord’s counsel submits that the tenant was served via registered mail on September 7, 2022 at address on “J” street listed on the cover page of this decision. The mailing was signed for by a person not identified as the tenant on September 7, 2022.

Landlord’s counsel directed me to two affidavits of attempted service. The first affidavit of process server BD, sworn August 22, 2022 indicates his investigations revealed a “possible current address” for the tenant at the “J” street address. Paragraph 5 of the affidavit indicates another process server was advised by the tenant that she no longer is living there, but is now living in Toronto, Ontario. The affiant confirmed by speaking with the tenant himself and was informed by the tenant that she was out of the province and would not be back until the end of September 2022.

A second affidavit of attempted service sworn October 25, 2022, from process server RR indicates at paragraph 5 that he went to the “J” street address, spoke to the concierge who “relayed” to the process server that she would be home at 6:00 that night. She never did so, according to the affidavit.

Analysis

The Residential Tenancy Branch Rules of Procedure states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a. the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b. the Respondent Instructions for Dispute Resolution;
- c. the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d. any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

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:

89(1) An application for dispute resolution,...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.*

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. (Excerpt reprinted below)

PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

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. Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The principles of natural justice and procedural fairness require that the tenant has been put on sufficient notice of the claim against her and that she has had adequate time and opportunity to respond to the application. Based on the evidence before me, I am not satisfied that the tenant was properly served with the documents within 3 days, as set out in Rule 3.1 of the Residential Tenancy Branch Rules of Procedure. I find that the "J" street address is not a forwarding address provided by the tenant, as contemplated by section 89(1)(d).

While section 71 of the Act allows the director the discretion to determine that a document not served in accordance with section 89 is sufficiently served for the purposes of the Residential Tenancy Act, I decline to make this finding. I do so on the lack of corroborative evidence to establish the "J" street address as a forwarding address of the tenant. As such, I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*.

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 23, 2023