



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord August 17, 2022 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”)
- To recover unpaid rent
- To recover the filing fee

This was an adjourned direct request.

M.B. appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to M.B. I told M.B. they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). M.B. provided affirmed testimony.

M.B. provided the correct rental unit address which is noted on the front page of this Decision.

Service

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord submitted a “Proof of Witness” stating that M.B. and another individual slid the hearing package inside the Tenant’s room. At the hearing, M.B. confirmed the

hearing package and Landlord's evidence were slid under the Tenant's door. M.B. confirmed the hearing package and evidence were not served in any other way.

Sections 88 and 89(1) of the *Residential Tenancy Act* (the "Act") set out how the hearing package and Landlord's evidence could be served on the Tenant and state:

88 All documents, **other than those referred to in section 89 [special rules for certain documents]**, that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1)...[as allowed in a Substituted Service Decision]

- (j) by any other means of service provided for in the regulations [by an email address provided as an address for service]

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)...[as allowed in a Substituted Service Decision]
- (f) by any other means of service provided for in the regulations [by an email address provided as an address for service]

The hearing package had to be served in accordance with section 89(1) of the *Act* and the Landlord's evidence had to be served in accordance with section 88 of the *Act*.

There is no section of the *Act* that allowed the Landlord to serve the Tenant by sliding documents under the Tenant's door. This is not a method of service allowed under the *Act*.

I acknowledge that I can find service sufficient pursuant to section 71(2) of the *Act*; however, I only find this appropriate when there is compelling evidence before me that the party served did in fact receive the hearing package and evidence, despite it not being served in accordance with sections 88 and 89 of the *Act*. Here, there is no evidence before me suggesting that the Tenant received the hearing package and evidence and therefore I do not find it appropriate to find the Tenant sufficiently served.

I note that the methods of service allowed under the *Act* are outlined for the parties in the hearing package sent to them by the RTB and on the RTB website.

Given the Landlord did not serve the Tenant with the hearing package in accordance with section 89(1) of the *Act*, I am not satisfied of service and dismiss the Application with leave to re-apply. This decision does not extend any time limits set out in the *Act*. I also note that, at this point the Notice is very dated and the Landlord may want to consider serving a new 10 Day Notice if rent remains outstanding.

Conclusion

The Application is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

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: February 24, 2023

Residential Tenancy Branch