



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 agent and I were the only ones who had called into this teleconference.

Preliminary Issue- Service

The agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on October 4, 2022. A registered mailing receipt dated October 4, 2022 was entered into evidence.

The agent testified that the tenant provided their forwarding address at the move out condition inspection on August 2, 2022. The agent then changed his testimony and said that the tenant texted the landlord with their forwarding address a few days after the move out inspection. The agent then testified that the tenant texted the landlord with their forwarding address on September 9, 2022.

The September 9, 2022 text was not entered into evidence. I permitted the agent in the hearing to upload the text message containing the forwarding address. The majority of

the text message is in another language. The portion of the text message in English states the name of an occupant listed on the tenancy agreement and an address.

The Canada Post website delivery confirmation for the October 4, 2022 registered mailing states that the package was signed for by an agent of the landlord, not the tenant or the occupant.

For registered mail service, section 89 of the *Act* requires the landlord to serve the tenant at the address at which they reside. I am not satisfied that the tenant was served at an address at which they reside because the landlord did not enter into evidence documents in English which prove that the tenant was served at an address provided by the tenant as a forwarding address. I am not satisfied that the name of the occupant accompanied by an address is a forwarding address for the tenant. The above in concert with the fact that an agent for the landlord signed the package three days after it was mailed has raised significant service issues. I find that the landlord has not proved service on a balance of probabilities.

The landlord's application is dismissed with leave to reapply for failure to prove service in accordance with section 89 of the *Act*. The landlord's application to recover the filing fee is dismissed without leave to reapply.

The agent confirmed the landlord's email address for service of this Decision.

Conclusion

The landlord's application is dismissed with leave to reapply. The landlord's application to recover the filing fee is dismissed without 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: June 15, 2023

Residential Tenancy Branch