

DECISION

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee under section 72 of the Act

I left the teleconference connection open until 1:45 pm to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The tenant did not attend the hearing. Landlord AB (the Landlord) 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 Landlord and I were the only ones who had called into this teleconference.

Service of Notice of Dispute Resolution Proceeding (the Proceeding Package)

The Landlord affirmed the tenancy started on November 1, 2021 and the Tenant moved out on April 5, 2022. The Tenant did not provide the forwarding address.

The Landlord mailed the proceeding package to the Tenant's address provided to the Landlord in 2021 when the Tenant applied for the tenancy using regular mail service. The Landlord also sent the proceeding package to the Tenant via email and text message.

The Tenant did not sign an authorization for email service.

Section 89(1) of the Act states:

- (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.

Policy Guideline 12 states “The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.”

Based on the Landlord’s testimony, I find the Landlord failed to prove service of the proceeding package in accordance with section 89(1) of the Act. Applicants must use registered mail to serve the proceeding package, not regular mail. Applicants can not serve the proceeding package via text message and can only serve via email if there is a document authorizing email service, as stated in Residential Tenancy Regulation 43(2).

Furthermore, the Landlord must mail the proceeding package to the Tenant’s forwarding address, as stated in section 89(1)(d) of the Act, not the address provided when the Tenant applied for the tenancy in 2021.

It is not fair to proceed with the hearing when the respondent does not attend and was not served the proceeding package in accordance with the Act.

As the Landlord did not serve the proceeding package in accordance with section 89(1) of the Act, I dismiss the Landlord’s application.

I grant leave to reapply because I did not hear the merits of the claims. Leave to reapply is not an extension of the timeline to apply.

Conclusion

I dismiss the application, with leave to reapply.

The Landlord must bear the cost of the filing fee, as the Landlord was not successful.

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: August 18, 2023

Residential Tenancy Branch