



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, MNDL-S, FFL

Introduction and preliminary matters

On December 11, 2019, the Landlords applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

E.L. attended the hearing as an agent for the Landlord and B.D. attended the hearing as the Owner/Landlord. The Tenant did not attend the one hour and forty-five-minute hearing. All in attendance provided a solemn affirmation.

B.D. advised that a Notice of Hearing and evidence package was served by registered mail on December 19, 2019 to the Tenant. He provided two registered mail tracking numbers for this date (the registered mail tracking numbers are noted on the first page of this Decision, and the two tracking numbers for this date are referred to as 3) and 4)).

He stated that the Tenant gave up vacant possession of the rental unit on or around December 1, 2019, but he did not provide the Landlords with a forwarding address in writing pursuant to 38 of the *Act*. However, the Tenant did provide an address for service over the phone, and this is the address that the Landlords used for this Application.

He advised that while the Tenant did not sign for one of these packages, as it was signed by the Tenant’s daughter, he “knows” that the Tenant lives there and that this is a valid service address for the Tenant.

B.D. amended his Application to increase the amount of monetary compensation he was seeking, and he stated that he served the Amendment to the Tenant by email on April 5, 2020 pursuant to the Director's Order, dated March 30, 2020, in response to the COVID-19 pandemic. He submitted a screenshot of service of this Amendment to the Tenant's email address to support that this was done.

As the Tenant was not present during the hearing, the importance of service of the Notice of Hearing package was discussed and B.D. then changed his testimony by stating that the Notice of Hearing and evidence package was also re-served to the Tenant by email, with the Amendment on April 5, 2020. He then stated that he sent this whole package by registered mail to the Tenant on April 6, 2020, and the relevant tracking number submitted is referred to as 5) on the first page of the Decision.

When reviewing the totality of the evidence regarding service of the Notice of Hearing package, I find it important to note that Section 89 of the Act below lists the methods with which this package may be served:

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].***

While it is B.D.'s position that he has satisfied service of the Notice of Hearing package requirements based on his submission that the Tenant provided his new address over the phone and that he "knows" the Tenant lives there or can receive service of

documents there, in order to be satisfied of service, I must review the registered mail tracking numbers provided by B.D.

In reviewing tracking number 1), I note that this package was sent on November 28, 2019 and was mailed before the Tenant gave up vacant possession of the rental unit. Furthermore, there is no address written on the tracking slip, other than a postal code. While this postal code matches the one used on the Application for service for the Tenant, and while the Tenant has signed to receive this package, it is not entirely clear what address was used for service or why it was sent to this address as the Tenant still had possession of the rental unit. More importantly, this package was sent prior to B.D.'s Application, and it is plausible that if the Notice of Hearing package was mailed out on December 19, 2019 to this same address, the Tenant could have moved from there. Thus, I am not satisfied that because the Tenant signed for package 1, that this would sufficiently support B.D.'s use of the address he used as a service address for the Notice of Hearing package to Tenant.

In reviewing tracking number 2), I note that this package was sent on December 1, 2019 and receipt of this package was not signed by the Tenant. While B.D. advised that this was signed by the Tenant's daughter and that he "knows" that the Tenant lives at that address, I acknowledge that the Tenant may live there, but the Landlord has not provided any compelling evidence of such, other than his belief that this is a valid address for service for the Tenant. Thus, I am not satisfied that this would sufficiently corroborate B.D.'s use of the address he used as a service address for the Notice of Hearing package to Tenant.

In reviewing tracking number 3), I note that this package was sent on December 19, 2019 and was signed for by the same person as package number 2). I note that there is no address written on the tracking slip, other than a postal code which matches the one used on the Application for service for the Tenant. However, similar to package 2), while this person signed to receive this package, other than B.D.'s belief that the Tenant lives at this address, I find that B.D. has provided insufficient, compelling evidence that this was a valid address for service for the Notice of Hearing package to Tenant.

In reviewing tracking number 4), I note that this package was sent on December 19, 2019, one and a half minutes after package 3) was purchased and mailed. Curiously however, there is no address written on the tracking slip, other than a postal code which is wholly different from the one used on the Application for service for the Tenant. In addition, this package was signed for by someone with a name that does not match the Tenant or the Tenant's daughter. It is not clear to me who this package was sent to or

why it was sent to this particular address. Consequently, I am not satisfied that this supports the Landlord's submissions that the Notice of Hearing package was served to the Tenant in accordance with the *Act*, nor is it consistent with his testimony that the address he used for the Application was the one that was provided over the phone.

Finally, in reviewing tracking number 5), I note that this package was sent on April 6, 2019 and was not signed for, but the Canada Post tracking notes indicate that this package was "Delivered to your community mailbox, parcel locker or apt./condo mailbox". I note that there is no address written on the tracking slip, other than a postal code which matches the one used on the Application for service for the Tenant. While Section 90 of the *Act* does permit documents sent by registered mail to be deemed received after five days of being mailed, I again find that B.D. has provided insufficient, compelling evidence that this was a valid address for service for the Notice of Hearing package to Tenant. Furthermore, even if I were to accept that this package was served in accordance with the *Act* to a valid service address for the Tenant, I find it important to note that Rule 3.1 of the Rules of Procedure requires that this Notice of Hearing package be served to the Tenant within three days of it being available to B.D., which was December 17, 2019. Clearly, this aspect was not complied with.

While B.D. had the opportunity to make an Application for Substituted Service for an Order permitting him to serve the Notice of Hearing package to the address that he was allegedly provided over the phone and where he could provide evidence supporting his belief that this was a valid service address for the Tenant, I note that he did not make this Application.

Furthermore, while it is B.D.'s position that he served the Notice of Hearing package by email in accordance with the Director's Order of March 30, 2020, I find it important to note that he initially testified that he only served the Amendment by email on April 5, 2020. This is corroborated by the screenshot he submitted as documentary evidence where the subject of the email is "Amendment to an Application for Dispute Resolution". He then changed his testimony and stated that he also submitted the entire Notice of Hearing package by email on April 5, 2020. While there is no evidence submitted by B.D. to support that this was done, even if I were to accept that this Notice of Hearing package was served in accordance with the Director's Order, I still note that this would not have been served in compliance with Rule 3.1 of the Rules of Procedure.

Moreover, while I accept that documents are permitted to be served by email pursuant to the Director's Order, this Order requires a form of confirmation of email receipt by way of a confirmation email, a reply email, or evidence that the email address being

used was routinely used for correspondence. As B.D. has not provided any of this, or any evidence that this email address is still active, I am not satisfied that the Notice of Hearing package was sufficiently served to the Tenant either. Again, even if I were to accept that this Notice of Hearing package was served in accordance with the Director's Order, I still note that this would not have been served in compliance with Rule 3.1 of the Rules of Procedure.

Based on the above, I am not satisfied that the Tenant has been served the Notice of Hearing package. As a result, I dismiss the Landlord's Application with leave to reapply.

As the Landlord was not successful in his claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Landlord's 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: May 20, 2020

Residential Tenancy Branch