



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL-S**

Introduction

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

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. 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.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she personally served the male tenant with the initials JO a copy of the Notice of Dispute Resolution Proceedings package by hand delivering it to him around 9:00 a.m. on September 17, 2020. No proof of service document was filed by the landlord to corroborate this testimony.

The copy of the Notice of Dispute Resolution Proceedings available to me through the Residential Tenancy Branch Dispute management system indicates that the Notice of Dispute Resolution Proceedings package was created and emailed to the landlord by the Residential Tenancy Branch on September 22, 2020. Based on this anomaly, I find it impossible that the Notice of Dispute Resolution Proceedings package was delivered to the tenant JO five days before it was generated by the Residential Tenancy Branch.

The landlord also testified that the tenants have moved out and that they did not provide a forwarding address to the landlord at the end of the tenancy.

Analysis

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 document]...*

Based on the landlord's testimony, the sole evidence presented to me regarding service of the Notice of Dispute Resolution Proceedings, I am not satisfied the tenants were properly served with the landlord's Application for Dispute Resolution and the Notice of Dispute Resolution Proceedings. As previously stated, it is impossible that the landlord served the tenant, JO with the Notice of Dispute Resolution Proceedings on September 17th when the notice was created five days later, on September 22nd.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position. I find that procedural fairness requires that I be satisfied the tenants have been served with the application for dispute resolution. Given the absence of any documentary evidence from the tenants and their failure to attend the hearing, I am not satisfied the tenants have been served with the application for dispute resolution. Consequently, I dismiss the landlord's application with leave to reapply.

The landlord is at liberty to apply for an order that the Notice of Dispute Resolution Proceedings be served by substituted service pursuant to section 71 of the Act if she is unaware of the tenant's forwarding address.

Conclusion

The landlord's application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to 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 *Residential Tenancy Act*.

Dated: January 11, 2021

Residential Tenancy Branch