



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on October 15, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on February 9, 2021 as a teleconference hearing. Only the Landlord A.R. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 35 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the A.R. and I were the only persons who had called into this teleconference.

A.R. stated that the Tenant has not provided the Landlords with their forwarding address, therefore, the Landlords sent the Tenant a copy of the Application and documentary evidence to the Tenant's place of business via Registered Mail on October 23, 2020.

Preliminary Matters

Section 89(1) of the Act provides guidance for parties with regards to service of certain documents including an Application for Dispute Resolution and the Notice of Hearing. The Notice must be given in one of the following ways; by leaving a copy with the Tenant (personal service); or, by sending a copy by registered mail **to the address at which the Tenant resides**.

A.R. stated that she served the Tenant via Registered Mail to the Tenant's place of business. I find that Section 89 of the Act does not permit the Landlord from doing so.

A.R. indicated that she is aware of where the Tenant works, therefore personal service may be an option available to the Landlords pursuant to Section 89 of the *Act*. Should personal service not be achievable, an application for substituted service may be made at the time of filing the application for dispute resolution or at a time after filing.

In these cases, the party applying for substituted service must be able to demonstrate two things:

- that the party to be served cannot be served by any of the methods permitted under the Legislation, and
- that there is a reasonable expectation that the party being served will receive the documents by the method requested.

It shall also be noted that according to Section 39 of the *Act*, a landlord may retain the security deposit if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Conclusion

The Landlords did not serve the Tenant with the Application and documentary evidence package to the address at which the Tenant resides. As such, the Landlords' 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: February 11, 2021

Residential Tenancy Branch