



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCT, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or the tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:42 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by property manager HL (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.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord affirmed he served the notice of hearing by registered mail on September 03, 2021. The tracking number and the address are recorded on the cover page of this decision.

The landlord affirmed the tenant moved out and did not provide a forwarding address. The landlord hired a skip tracer and obtained the address used for service. The landlord submitted an invoice from the skip tracer indicating the tenant's address. The landlord does not have any other information or document indicating the tenant's forwarding address.

Canada Post indicates the tracking number package was delivered on September 15, 2021, but there is no signature.

Section 89(1)(c) of the Act states:

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:
by sending a copy by registered mail to the address at which the person resides

Residential Tenancy Branch Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

[...]

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.

I find the skip tracer invoice is not sufficient to prove the tenant's forwarding address. The landlord does not have any other information or document to corroborate the address provided by the skip tracer. Based on the landlord's testimony and the invoice, I find the landlord did not prove, on a balance of probabilities, that he served the notice of hearing to the tenant's forwarding address.

As such, I find the landlord did not serve the notice of hearing in accordance with section 89(1) of the Act.

I dismiss the landlord's application with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee.

Conclusion

The landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable timeline.

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: March 02, 2022

Residential Tenancy Branch