



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing scheduled for 1:30 p.m. although the teleconference connection was left open throughout. 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 was represented at the hearing by an agent, KZ and the landlord’s spouse, HRD. The landlord’s agent testified that she served the tenant with the Notice of Dispute Resolution Proceedings package via text message.

Preliminary issue

On December 16, 2022, the landlord was granted a substituted service order by an adjudicator of the Residential Tenancy Branch. In the decision, the adjudicator writes,

“I further find that it would be reasonable to conclude from this that the tenant would receive the Notice of Dispute Resolution Proceeding (the Notice) with supporting documents and evidence and have actual knowledge of the Notice if it were served to the tenant by text message.

For this reason, I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding (the Notice) with supporting documents and evidence by text message to the phone number listed on the second page of this decision.

I order the landlord to provide proof of service of the text messages which may include a screen shot of the sent items, a reply text from the tenant, or other documentation to confirm the landlord has served the tenant in accordance with this order.”

The landlord believes she uploaded the proof of service to the Residential Tenancy Branch’s dispute management system in accordance with the adjudicator’s order but was unable to verify it. I advised the landlord that no evidence was uploaded by either party anytime after the original set of evidence was uploaded on September 2, 2022. No proof of service from the landlord was in the Residential Tenancy Branch’s dispute management system.

Section 71 states that the director may order that a notice, order, process or other document may be served by substituted service in accordance with the order. When granting the substituted service order, the director also ordered that the landlord provide specific proof of service, as noted above. No screen shot of the sent items, a reply text from the tenant or any other documentation was ever uploaded into the dispute management system. I find that the landlord failed to comply with the order by failing to provide the requested proof of serving the tenant via text message.

The landlord was unable to provide the proof of serving the tenant via text message, as ordered by the director. As such, I am not satisfied the tenant was sufficiently served with notice of this hearing. Consequently, I dismiss this application with leave to reapply.

Conclusion

This application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution.

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 30, 2023

Residential Tenancy Branch