



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

On June 16, 2015 an Arbitrator with the Residential Tenancy Branch granted the Landlord authority to serve the Respondents/Tenants with the Application for Dispute Resolution and Notice of Hearing to three email addresses, which are recorded in the Substitute Service Order of June 16, 2015.

The hearing on December 15, 2015 was adjourned because I was unable to locate documentary evidence which establishes that these documents were sent to those three email address, although the Landlord believed it had been submitted. The Landlord was given the opportunity to resubmit this documentary evidence.

On December 22, 2015 the Landlord submitted documentation that indicates the Application for Dispute Resolution and notice of the hearing were sent to three email addresses on July 07, 2015 and that they were sent to one of those address twice.

Although I did not notice it at the time of the hearing I noticed, upon reviewing the documentation, which the documents were not sent to one of the email addresses specified in the Substitute Service Order of June 16, 2015. I note that two of the email addresses are remarkably similar, with the exception of one letter.

At the hearing on February 09, 2016 the Landlord stated that my interim decision of December 16, 2015 and notice of the hearing on February 09, 2016 were sent to the three email addresses recorded in the Substitute Service Order of June 16, 2015.

On December 30, 2015 the Landlord submitted documentation that indicates that the notice of the hearing on February 09, 2016 were sent to three email addresses on December 25, 2015 and that it was sent to one of those address twice.

Although I did not notice it at the time of the hearing I noticed, upon reviewing the documentation, which the notice was not sent to one of the email addresses specified in the Substitute Service Order of June 16, 2015.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1)(e) of the *Act* authorizes a landlord to serve a tenant with an Application for Dispute Resolution in a manner as ordered by the director under section 71(1) of the *Act*. In these circumstances I find that the Landlord had authority to serve the Application for Dispute Resolution and Notice of Hearing to the Tenants by sending them to three email addresses, which are recorded in the Substitute Service Order of June 16, 2015.

On the basis of the documentary evidence submitted by the Landlord I find that the Landlord only served Application for Dispute Resolution and Notices of Hearing to two of the email addresses specified in the Substitute Service Order of June 16, 2015. As the Landlord did not serve the documents in full accordance with the Substitute Service Order of June 16, 2015, I find that the documents have not been served in accordance with section 89(1)(e) of the *Act*.

As the Landlord has failed to establish that the documents have been served in accordance with section 89(1) of the *Act* and the Tenants were not present at either hearing, I find that I am unable to adjudicate this matter. I therefore dismiss the Application for Dispute Resolution, with leave to reapply.

The Landlord retains the right to file another Application for Dispute Resolution in regards to these issues. I note that the Landlord is not required to refund the security deposit until he receives a forwarding address from the Tenants, in writing.

Conclusion

The Application for Dispute Resolution has been 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 09, 2016

Residential Tenancy Branch