



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes

MNDCL-S, MNDL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlords' application for:

- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- a Monetary Order for damages pursuant to section 67 of the *Act*;
- an Order allowing the landlords to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Only the landlords' agent attended the hearing. Neither tenant attended at the appointed time set for the hearing, although I waited until 1:45 P.M. to enable them to participate in this hearing scheduled for 1:30 P.M. The landlords' agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Issue(s) to be Decided

Are the landlords entitled to:

- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- a Monetary Order for damages pursuant to section 67 of the *Act*;
- to retain the security deposit pursuant to section 38 of the *Act*; and
- to recover the filing fee from the tenants pursuant to section 72 of the *Act*.

Preliminary Issue – Service on the tenants

The landlords had brought an application for an Order permitting substituted service of the Application for Dispute Resolution on the tenants via email. The substituted service application

was made without a participatory hearing pursuant to section 71 of the Act, on December 22, 2017. On December 22, 2017, a Decision was issued which provided in part:

“The landlords are granted an order for substituted service. The landlords may serve the tenant JD the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of this substituted decision, to the tenant JD’s email address set out above.”

There is no documentary evidence before me to prove that the tenants were ever served with the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of the substituted service Decision dated December 22, 2017, via the tenant JD’s email address, in compliance with the terms of the Decision.

The landlord’s agent JJ stated that an email had been sent however she had not filed any documentary proof of this fact or, any proof of what documents were sent with the email. She did say no response was received to the email.

Analysis and Conclusion

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

The Act, the applicable rules and guidelines all have specific requirements pertaining to service of a hearing notice. This is to ensure that all parties are aware of the claim and have opportunity to respond. The applicant has the burden of proving service at the hearing, under paragraph 3.5 of the Rules of Procedure which states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

The landlords as the applicants in this case have the burden of proving service by one of the prescribed methods, as stated in paragraph 15 of Policy Guideline 12:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Rule 6.3 of the RTB Rules of Procedure enables me to adjourn a hearing at any time.

I find there is not sufficient evidence before me to prove that the tenants were served with the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of the substituted service Decision dated December 22, 2017, via the tenant JD’s email address, in compliance with the Decision.

As a result, this Application is adjourned to a new hearing date; the landlord is required to serve this decision and the new Notice of Hearing on the tenants.

Conclusion

Based on the above:

- **I order** this hearing will be reconvened on the date identified in the Notice of Hearing documents attached to this decision;
- **I order** that this not an opportunity for the landlords to amend this Application for Dispute Resolution to include any additional claims;
- **I order** that the landlords are granted leave to submit documentary evidence to to prove that the tenants were served with the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of the substituted service Decision dated January 22, 2017, via the tenant JD's email address, in compliance with the terms of the December 22, 2017, Decision.
- **I order** that this not an opportunity for the tenants to submit an Application for Dispute Resolution to be crossed with these Applications for Dispute Resolution.
- **I order** that all parties must serve any evidence they intend to rely upon at the reconvened hearing subject to the deadlines set forth in Residential Tenancy Branch Rule of Procedure 3.

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: June 28, 2018

Residential Tenancy Branch