



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Woodbine Townhomes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

Pursuant to section 9.1 (1) of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- a Monetary Order for damages to the premises pursuant to section 67 of the *Act*;
- an Order allowing the landlord 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*.

The landlord's agent and the tenant SA attended the hearing. The tenant BH did not attend the hearing, although I left the teleconference connection open until 1:45 PM to enable the tenant BH to call into the hearing scheduled for 1:30 PM. 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's agent, the tenant SA and I were the only ones who had called into this teleconference.

The landlord's agent and the tenant SA were given a full opportunity to be heard, to present affirmed testimony, to make submissions and, to call witnesses.

Issue(s) to be Decided

Is the landlord entitled to:

- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- a Monetary Order for damages to the premises pursuant to section 67 of the *Act*;
- an Order allowing the landlord 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*.

Background and Evidence

At the outset of the hearing evidence was given about the service of the Notice of Hearing on the two tenants. The tenant SA who was on the call confirmed that she received the documents via registered mail on December 20, 2017, and stated that her step-father signed for and picked up two packages. The

address used by the landlord's agent for service of the Notice of Hearing was provided by the tenant SA in writing on December 5th. This specifically stated in part, "...this is my address...".

SA confirmed in her evidence that she and the tenant BH did not live together at the new address; that she had only spoken to BH once or twice since early December 2017; that as far as she was aware that BH lived at the address he had written on the move-out Condition Inspection Report; that she had not given BH a copy of the Notice of Hearing.

I indicated to the agent for the landlord that while there was no issue regarding service on the tenant SA that I was not able to find that the tenant BH had been properly served with the Notice of Hearing based on the evidence before me.

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.

As the tenant BH had not called into the conference call by 1:45 PM, and the landlord's agent did not present conclusive evidence about the service of the Notice of Hearing on the tenant BH, all parties present at the hearing agreed that the matter should be and is hereby **dismissed with leave to reapply**. However, this does not extend any applicable time limits under the *Act* and I have made no findings of fact or law with respect to the merits of this Application.

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: July 4, 2018

Residential Tenancy Branch