



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Blue Sky Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order for compensation for damages and rent arrears; the Landlord also requests an order to retain the security deposit in partial satisfaction. The Landlord requests an order for payment of the filing fee of \$100.00.

The Landlord’s Agent (hereinafter referred to as “Landlord”) appeared for the scheduled hearing, along with a witness. The Landlord stated that the Tenant had gone missing shortly after he was seen outside the rental unit on December 6, 2017; the Tenant had given notice to end the tenancy on November 30, 2017. The Landlord advises that there were police reports searching for the Tenant as late as March of 2018. Later reports found online indicate that a celebration of life event took place in June of 2018 and that the Tenant died on or about December 15, 2017.

Preliminary Matters

The Landlord states that they served their Notice of Hearing and evidence package to the Senior Trust Officer working at a major financial institution in eastern Canada, who had been their contact to deal with all financial matters for the Tenant throughout the five-year tenancy.

The package was sent out by registered mail on January 3, 2018. The Landlord states the trust officer’s email reply stated that he did not have authority to address the claims or the dispute and they were referred to the Tenant’s brother. The brother did not know the Tenant’s whereabouts at that time and stated that the Tenant would need to authorize the trust officer to represent him.

Issues to be Decided

Is the Landlord entitled to a monetary order for compensation for damages and rent arrears, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to retain all or part of the security deposit in satisfaction of the monetary order, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Analysis and Conclusion

In order to proceed with a hearing on the claims presented by the Landlord, the Landlord has the burden of proving proper service of the Notice of Hearing on the Tenant, their agent or the estate of the Tenant. The service by registered mail on the trust officer does not comply with section 89 of the Act, as the Tenant was not residing at that address, nor was that a forwarding address provided by the Tenant, their agent or the estate of the Tenant.

I am not satisfied that the Notice of Hearing was served on the Tenant, their agent, or the estate of the Tenant. Under section 2 of the Act, a "tenant" includes the estate of a deceased tenant. Accordingly, the Landlord will need to serve the estate representative of the deceased tenant, if one has been appointed.

In any event, pursuant to section 39 of the Act, the Landlord would be entitled to retain the security deposit of the Tenant if the Tenant's estate representative does not provide a forwarding address to the Landlord within one year after the end of the tenancy.

This Application is dismissed with leave to reapply. However, this does not extend any applicable time limits under the *Residential Tenancy 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 31, 2018

Residential Tenancy Branch