



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

On March 21, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a monetary order for unpaid rent, a monetary order for compensation for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord also submitted a request to serve the Application for Dispute Resolution, along with supporting documents, to the Tenant’s email address. On March 26, 2019, a Residential Tenancy Branch adjudicator granted an order for substituted service and provided the Landlord permission to serve the Tenant the Application for Dispute Resolution via the Tenant’s email address.

On May 21, 2019, the Landlord attended the scheduled conference call hearing; however, the Tenant failed to appear. As a result of the hearing, the arbitrator found that the Landlord established a monetary claim. The arbitrator ordered that the Landlord could keep the Tenant’s security deposit and further, granted the Landlord a monetary order for the balance of unpaid rent.

On June 3, 2019, the Tenant applied to the Residential Tenancy Branch for a review consideration of the May 21, 2019 decision. In their Review Consideration Decision, dated June 12, 2019, the arbitrator found that there was no evidence before them that indicated that the Tenant actually received the Landlord’s email with the original Application for Dispute Resolution. The arbitrator ordered that a new hearing of the original application should take place and that the Tenant must provide the Landlord with a physical address or an operational email address for service of documents.

The arbitrator included that notices with the time and date of the new hearing were included with the Review Consideration Decision for the Tenant to serve to the Landlord

within 3 days of the Tenant's receipt of the decision. The Tenant was to also serve a copy of the Review Consideration Decision to the Landlord.

A new hearing date of August 13, 2019 was set for the Landlord's issues included in the original Application for Dispute Resolution.

Preliminary Matters

The Landlord and Tenant attended the August 13, 2019 hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence in relation to the service of documents.

The Tenant testified that he received the Review Consideration Decision, via email from the Residential Tenancy Branch, on June 12, 2019. The Tenant stated that he was unable to confirm the Landlord's address as the Landlord had previously lived on the ground floor of the rental unit on a part-time basis but had not been there in some time. The Tenant said that after conducting a title search, he ended up serving the Landlord an evidence package, at the ground floor of the rental unit, on August 6, 2019. The Tenant stated that he did not include a copy of the Review Consideration Decision or his address for service to the Landlord.

The Tenant stated that he has not received any evidence from the Landlord.

The Landlord agreed that the Tenant personally served him an evidence package on August 6, 2019 and acknowledged that he had been out of the country; however, that the ground floor of the rental unit was still his address for the service of documents. The Landlord stated that the Tenant did not provide him an address to forward any documents in the August 6, 2019 evidence package.

The Landlord also agreed that he received a duplicate copy of the Tenant's evidence package on August 8, 2019 via registered mail and at that time, an address for the Tenant was included. The Landlord stated that he did not have time to respond to the Tenant's claims or send him an evidence package as the hearing was only 5 days away.

The Landlord submitted several photos and statements as new evidence to the Residential Tenancy Branch on the day of the hearing.

The Tenant provided an address for service during the hearing.

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Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the

settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following findings were made by myself (the Arbitrator).

Analysis

Although the Tenant stated he did not know where to serve the Landlord the documents related to this dispute, the Tenant did serve the Landlord an evidence package on two occasions being August 6, 2019 and August 8, 2019. Based on the Rules of Procedure 3.15, I find that the Tenant was late in providing the Landlord the evidence packages and therefore, the Tenant's evidence should be excluded from the hearing.

The Landlord submitted a new evidence package to the Residential Tenancy Branch on the day of the hearing, contrary to the Rules of Procedure 3.14. I find that this evidence package should be excluded from the hearing.

I find that there has not been an exchange of evidence between the parties pursuant to the Act and that evidence from both parties would have been excluded from the hearing due to late service. Rather than attempt to conduct the hearing without the evidence, and now that the parties are aware of each others service addresses, I dismiss this Application for Dispute Resolution with leave to reapply.

As of the date of this hearing, the parties have exchanged addresses for the service of documents. If either party wishes to apply for dispute resolution, they may do so as I have not made any findings in regard to the merit of the original issues.

As there is still the matter of an outstanding security deposit, I order that the Landlord either return the security deposit to the Tenant within fifteen days of receiving this Decision or apply for Dispute Resolution to apply the security deposit to any losses or damages.

Conclusion

I dismiss the Application for Dispute Resolution with leave to reapply, however, this does not extend any applicable time limits under the legislation. I have not made any findings of fact or law with respect to issues included in the Application.

I order that the Landlord either return the security deposit to the Tenant within fifteen days of receiving this Decision or apply for Dispute Resolution to apply the security deposit to any losses or damages.

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: August 15, 2019

Residential Tenancy Branch