



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOWNTOWN SUITES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

On June 13, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for damage; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord’s agents (“the Landlord”) attended the teleconference hearing; however, the Tenant did not.

Preliminary and Procedural Matters

The Landlord applied for an order of substituted service to permit them to serve the Tenant with the Notice of Dispute Resolution Proceeding using email. The Landlord’s application for substituted service was granted on June 19, 2019.

The Landlord testified that they sent the Notice of Dispute Resolution Proceeding to the Tenant using email sent to the Tenant on June 20, 2019. The Landlord testified that the Tenant gave them evidence in response on May 7, 2019. The Landlord testified that a copy of the email that was sent to the Tenant was provided to the Residential Tenancy Branch as proof of service.

Following the hearing, the Landlords’ documentary evidence was reviewed, and a copy of the email sent to the Tenant on June 20, 2019 was not found in the Landlords’ documentary evidence.

I note that the Landlords submission that the Tenant responded to them on May 7, 2019 is prior to the service date of June 20, 2019.

Upon review of the June 19, 2019 decision to permit substituted service, the adjudicator writes:

I order the landlord to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

A fundamental principle of natural justice is that a party to a proceeding has the right to receive notice and have an opportunity to respond.

Residential Tenancy Policy Guideline # 12 Service provisions provides that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

I find that the Landlord failed to provide sufficient evidence to prove that the Tenant was served with the Notice of Dispute Resolution Proceeding using email.

The Landlords' application is dismissed in its entirety 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: October 16, 2019

Residential Tenancy Branch