



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on July 9, 2020. The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act, and for unpaid rent; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlords attended the hearing. However, the Tenant did not. The Landlords testified that they sent the Notice of Hearing and evidence to the Tenant by email on June 12, 2020.

The Landlords stated that the Tenant gave them his email address at the start of the tenancy, in the fall of 2019. The Landlords also stated that, despite sending the Tenant emails in the past, he has never responded back via email. Further, the Landlords stated that after they sent the Tenant this email, containing the Notice of Hearing and evidence on June 12, 2020, he never responded to this email, either. The Landlords stated that the Tenant clearly ran into money troubles, and has been evasive and uncommunicative over the last month. The Landlords stated that the Tenant left without proper notice and without paying rent at the end of June.

I find it important to note that the Residential Tenancy Branch has recognized the challenges and immense impacts that the COVID-19 pandemic has had on landlords and tenants. As such, the Government has made some changes to assist landlords and

tenants manage through COVID-19. These provisions are in effect during the course of the state of emergency and until further notice.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. However, some of these provisions have been modified, due to the pandemic, and the Director has issued practice directives. For example, at the time the Landlords filed this application, the following directive was issued to clarify service issues:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency.

As stated in the Director's Order, emailed documents will be deemed received as follows:

1. If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;
2. If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
3. If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

At the time this application was made, emailing documents to the other party was generally acceptable given the current pandemic. However, there are some parameters around making the determination that these documents are sufficiently served for the purposes of this application. These parameters are outlined above.

I find it important to note that the Landlords specifically stated that Tenant never confirmed receipt, by way of a return email (point #1 above). I further note the Landlord stated that the Tenant has never responded at all to *any* of their emails, at the address they sent it to (point #2 above). Also, I note that the Landlords stated they have never had two-way communication via email before, at the address they used. Although the Landlords have sent information to the Tenant via his email, there is a notable lack of evidence showing he received and responded to any of these emails, and more

specifically, the one containing the Notice of Hearing and evidence. There is insufficient evidence to show the email address the Landlords have is an address the parties have routinely used for back and forth correspondence (point #3 above). I do not find the Landlords have sufficiently demonstrated that they meet any of the 3 above criteria, which would allow the documents to be deemed served, by email.

It does not appear the Landlords attempted to serve the Tenant in any other manner, and I find there is insufficient evidence that the Tenant was served in accordance with any of the allowable methods of service under section 89 of the Act. Although email service is a temporary accommodation, to assist parties with service during the pandemic, there are specific parameters around deeming that documents are sufficiently served by email. I find the Landlords have failed to meet those email service parameters, as outlined above.

Ultimately, I do not find there is sufficient evidence that the Landlords have served the Tenant with the Notice of Dispute Resolution, and evidence in any of the methods described above.

Since the Notice of Dispute Resolution has not been sufficiently served, I dismiss the Landlords' application, with leave to reapply.

The Landlords may wish to seek an order for substituted service, should they wish to re-file their monetary claim, and should they decide to pursue service in a manner not listed under section 89 of the Act. Should the Landlords use a method of service under section 89 of the Act, they will not require a substituted service order if and when they re-file their application and get a new Notice of Dispute Resolution proceeding. The Landlords are granted leave to re-apply for all outstanding monetary compensation.

Conclusion

The Landlord's application is dismissed, with leave.

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 09, 2020

Residential Tenancy Branch