



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with an adjourned ex parte application by the tenants under the *Residential Tenancy Act* (the Act) for:

- an order for the landlord to return the security deposit, pursuant to sections 38 and 38.1 of the Act, and
- an authorization to recover the filing fee for this application.

The landlord and the tenants attended. Both parties were given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue - Adjournment

Both parties agreed the tenants sent the notice of hearing and evidence (the materials) by email on June 18, 2020. The landlord affirmed she received the materials around around one week after it was sent, as her email inbox was full.

As the materials were emailed on June 18, 2020, I deem the landlord received them on June 21, 2020, in accordance with the Residential Tenancy Branch Director's order dated March 30, 2020 which provides:

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act and sections 64(2)(b) and (c) of the Manufactured Home Park Tenancy Act, I order that, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended:

- a document of the type described in section 88 or 89 of the Residential Tenancy Act or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:

the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, **in which case the document is deemed to have been received three days after it was emailed**

(emphasis added)

The landlord affirmed she could not give her responsive evidence by email because by the time she received the application, the above-mentioned director's order allowing email service was rescinded pursuant to the Residential Tenancy Branch Director's order dated June 24, 2020, which provides:

I order that the Director's order dated March 30, 2020 is rescinded, except that the March 30, 2020 order continues to apply to any document emailed on or before June 23, 2020, even if that document is not yet deemed to have been received under the terms of the March 30, 2020 order.

The landlord affirmed she could not give her responsive evidence by registered mail because she did not have the tenants' forwarding address. I adjourned the hearing to provide the landlord with more time to provide her response to the tenants.

After the hearing I noted the second page of the notice of hearing, which the landlord confirmed receiving, provides the tenants' address for service of documents. Thus, I am correcting my verbal decision in the hearing and order that the landlord is not allowed extra time to serve her response to the tenants.

The tenants confirmed during the hearing that their forwarding address is the same as the address that was recoded on the notice of hearing.

Conclusion

Based on the above:

- **I order** that pursuant to Rule of Procedure 7.8, this hearing will be reconvened in accordance with the Notice of Hearing documents attached to this Interim Decision; this interim decision and Notice of Hearing have been provided to both parties;

- **I order** that pursuant to Rule of Procedure 3.14 and 4.3, this is not an opportunity for the tenants to provide additional evidence or amend the existing Application for Dispute Resolution;
- **I order** that pursuant to Rule of Procedure 3.15, the landlord is not allowed any more time to provide the tenant evidence that the respondent intends to rely on at the hearing;
- **I order** that pursuant to Rule of Procedure 2.11, this is not an opportunity for either party to submit an additional Application for Dispute Resolution to be crossed or joined with any of the Applications for Dispute Resolution currently before me.

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 15, 2020

Residential Tenancy Branch