



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. this date by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent; an order permitting the landlord to keep the security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, however the line remained open while the telephone system was monitored for in excess of 15 minutes and no one for the tenant joined the call.

The landlord was unable to provide any evidence with respect to how or when the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package). A party making an application must serve the documents on the respondent within 3 days of making the application.

The landlord advised that the tenant has moved to Spain, and how or when the application could have been served is unknown, however the tenant had made an application for return of the security deposit, and the automated system of the Residential Tenancy Branch in this application contains a reference to a Decision of an Adjudicator regarding the security deposit.

I have reviewed the Decision of the Adjudicator, dated May 5, 2020. The tenant's application was made by way of the Direct Request Proceeding, which is an ex-parte proceeding, without an oral hearing. The Decision states that the tenant hadn't given a forwarding address in writing to the landlord at the move-out inspection. It also states that there was no evidence that the tenant had served the landlord with the Notice of Direct Request Proceeding, and the application was dismissed with leave to reapply.

I reiterate the Decision of the adjudicator:

“Section 38(1) of the Act states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).”

In addition, if the tenant does not provide a forwarding address in writing within a year from the date the tenancy ended, the landlord may keep the security deposit.

Given that there are no orders with respect the security deposit, I find that it would be just in the circumstances to dismiss the landlord’s application with leave to reapply.

I am not satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*. Therefore, I dismiss the landlord’s application with leave to reapply.

Conclusion

For the reasons set out above, the landlord’s application is hereby dismissed 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: August 28, 2020

Residential Tenancy Branch