



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the Application) that was adjourned to a participatory hearing. The Tenants filed under the Residential Tenancy Act (the Act), seeking:

- The return of their security and pet damage deposits, and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant G.A. (the Tenant), who provided affirmed testimony. The Landlord did not attend.

In the Interim Decision dated July 29, 2020, an Adjudicator ordered that the *Ex Parte* Direct Request proceeding be adjourned and reconvened as a participatory hearing. The Interim Decision also contained the following wording, which I have reproduced as written:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the landlord within three (3) days of receiving this decision in accordance with section 89 of the Act.

In the hearing the Tenant acknowledged that they did not serve the Landlord with notice of the participatory hearing as they stated that they were unaware of their obligation to do so. Although the Tenant stated that the Landlord acknowledged over email that they were aware of the hearing, a copy of this email was not before me for consideration.

In the Interim Decision dated July 29, 2020, the Tenants were clearly advised of their obligation to serve the Landlord with the attached notice of hearing documents in

relation to the participatory hearing, which the Tenant acknowledged was not done. Although the Tenant stated that the Landlord was aware of the hearing despite the lack of service, no documentary or other evidence in support of this testimony was submitted for my consideration.

The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlord was not served with the Notice of Hearing by the Tenants as required, I find that I am not satisfied that they had a fair opportunity to know the case against them or appear at the participatory hearing in their defense. Further to this, I find that proceeding with the hearing as scheduled considering the above, would result in a breach of the Act, the Rules of Procedure, and the principles of natural justice. As a result, I dismiss the Tenants' Application seeking the return of their security and pet damage deposits with leave to reapply. As the Application was dismissed, I decline to grant the Tenant's recovery of the filing fee and I therefore dismiss this portion of the Application without leave to reapply.

Conclusion

The Tenants' Application seeking the return of their security and pet damage deposits pursuant to section 38 of the Act is dismissed with leave to reapply. This is not an extension of any statutory deadline.

The Tenants' Application seeking recovery of the filing fee for this Application is dismissed without 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: September 1, 2020

Residential Tenancy Branch