



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 dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for utilities, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants and the "female landlord" did not attend this hearing, which lasted approximately 15 minutes. The male landlord ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to represent the female landlord at this hearing (collectively "landlords").

Preliminary Issue – Service of Landlords' Application

The landlord testified that the tenants were served with the landlords' application for dispute resolution and notice of hearing by way of email on August 22, 2020. He said that the tenants were served with the substituted service decision, dated August 31, 2020, made by an Adjudicator ("SS decision") on September 3, 2020, by way of email. He claimed that the tenants were served with the landlords' evidence on November 17, 2020, by way of email.

At page 3 of the SS decision, the Adjudicator stated:

I order the landlord to provide proof of service of the e-mail which may include a printout 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.

The landlords did not provide a copy of the emails confirming service to the tenants, indicating who it was sent to, when it was sent or what was sent. The landlord stated that he did not read the above passage in the SS decision. The landlord provided a date of service, August 22, 2020, before the SS decision was even issued on August 31, 2020, for the landlords to serve the tenants by email. The landlord had ample time to provide this evidence for this hearing, considering his application was filed on August 18, 2020 and this hearing occurred on December 8, 2020.

I find that the landlords were unable to provide sufficient evidence regarding service of this application, notice of hearing, evidence and the SS decision. The landlords did not provide a copy of any of the emails for service, which they were ordered to do in the SS decision. The tenants did not appear at this hearing to confirm receipt of the above documents. Accordingly, I find that the landlords failed to prove service in accordance with section 89 of the *Act* and the tenants were not served with the landlords' application.

At the hearing, I informed the landlord that I was dismissing the landlords' application with leave to reapply, except for the filing fee. I notified him that the landlords would be required to file a new application and pay a new filing fee, if they wished to pursue this matter further. The landlord confirmed his understanding of same.

I informed the landlord that the landlords would have to prove service at the next hearing, including specific evidence regarding the date and method for service of the application and any evidence. I cautioned him about using the same substituted service decision to email application documents to the tenants, given that the decision was made on August 31, 2020 and it may not be relevant in a future application. The landlord confirmed his understanding of same.

Conclusion

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlords' application is 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: December 08, 2020

Residential Tenancy Branch