Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BENCHMARK MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of $3,000.00; for a monetary order for damage or compensation for damage under the Act of $2,553.75; for unpaid utilities and loss of rent revenue for November 2020, retaining the security deposit for these claims; and to recover the $100.00 cost of their Application filing fee.

An advocate for the Landlord ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants, M.M. and S.H. The teleconference phone line remained open for over thirty minutes and was monitored throughout this time. The only person to call into the hearing was the Advocate, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Advocate.

I explained the hearing process to the Advocate and gave her an opportunity to ask questions about the hearing process. During the hearing the Advocate was given the opportunity to provide her evidence orally and to respond to my questions.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing on them. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Advocate testified that the Landlord served the Tenants with these documents by Canada Post registered mail, sent on October 30, 2020. The Landlord provided Canada Post tracking numbers as evidence of this service. She said the Landlord's documents were mailed to the rental unit address, where the Tenant, M.M., lived until November 30, 2020.

Further, the Advocate said the Tenants did not provide their forwarding address(es), and she did not have their email addresses. The Advocate said that the Tenant, S.H., moved out on September 1, 2020; therefore, S.H. was not living in the rental suite when the Landlord sent her a registered mail package regarding this hearing. The Landlord did not apply to the RTB for an order for substituted service for either Tenant.

Rule 3.5 states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package. Based on the evidence before me in this matter, I find that the Landlord did not serve the Tenant, S.H., properly, and therefore, **I dismiss the Landlord's claim against the Tenant, S.H., without leave to reapply**.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Landlord served the Tenant, M.M., with the Notice of Hearing documents on November 4, 2020. I, therefore, admitted the Application, and continued to hear from the Advocate in the absence of M.M.

Preliminary and Procedural Matters

The Advocate confirmed her email address in the hearing, as well as her understanding that the Decision would be sent to the Parties and Orders sent to the appropriate Party.

The Landlord did not submit any documentary evidence

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

- Background and Evidence

The Advocate said that there was no written tenancy agreement for this tenancy. She confirmed that the tenancy began on September 15, 2017, with a monthly rent of $750.00, due on the first day of each month. The Advocate confirmed that the Tenants paid the Landlord a security deposit of $375.00, and no pet damage deposit. She said the Landlord still holds the Tenants' security deposit. The Advocate said that, although the Landlord posted an order of possession on the rental unit door on August 18, 2020, the Tenant, M.M., vacated the rental unit pursuant to a mutual agreement ending the

tenancy on November 30, 2020, which was signed in June 2020. The mutual agreement is not in evidence before me.

The Landlord has set out a series of claims in the Application; however, they have not provided any documentary evidence to support their claims. Further, the Advocate said the claims have been amended – reduced – since applying, and she tried to explain the changes in the hearing, rather than the Landlord having filed an amendment to the Application and serving it on the Tenants.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

When I consider what is before me in this matter, I find that the Landlord provided insufficient evidence to support a fair and appropriate dispute resolution process; therefore, pursuant to Rule 3.0.7 and section 62 of the Act, I dismiss this Application wholly for sufficient evidence, without leave to reapply.

Conclusion

The Landlord is unsuccessful in this Application, as they provided insufficient evidence to support their claims and the service requirements under the Act. The 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: February 15, 2021

Residential Tenancy Branch