Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M W Reagon Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND-S, MNR-S, FF

Introduction, Preliminary and Procedural Matters-

This hearing convened to deal with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) made on January 16, 2021, for:

- compensation for alleged damage to the rental unit by the tenant;
- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlords and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

When attempting to confirm that the landlord properly served the tenant with their application for dispute resolution and amended application for dispute resolution, the evidence was unclear.

The landlord submitted that they served the tenant their application and amended application by registered mail to the tenant's place of employment and by email.

The tenant said she received the email containing the amended application, but not the original application. The tenant submitted that she understood the entire monetary claim of the landlord to be $3,218.17.

The tenant also said she is not allowed to receive personal mail at her place of employment and would not have received the mail.

The landlord said that their entire monetary claim was $5,320.76.

Landlord CH said that she was told by the Residential Tenancy Branch (RTB) that she could serve her application and amended application by email and to the tenant's place of employment. When asking the landlord to read from a document permitting her to serve the tenant that way, it was determined that there was no actual permission granted, but was the address on the Notice of Hearing, which had been the address provided by the applicants in their application.

Additionally, the landlord said that she had confirmation from the tenant that she received the original application and amended application, and when asked to find that email from the tenant with such confirmation, the landlord referenced an application made on December 27, 2020, not the current application made on January 16, 2021.

From my reading of the evidence and the statements at the hearing, it appears the landlord combined evidence and claims from a previous application for dispute resolution and this application. The landlord said they were told by staff at the RTB this was allowed.

I find this is not allowed. Each application for dispute resolution stands on its own and cannot be combined with other landlord applications that have either been dismissed, withdrawn, or abandoned.

Further, the landlord did not direct my attention to any written statement from the tenant allowing specifically for service of documents by email.

I informed the parties that I could not proceed on the landlord's application due to service issues.

Analysis and Conclusion

Section 59(3) of the Act requires that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

Section 89(1) of the Act requires that an application for dispute resolution, which includes the notice of hearing, must be given by handing the documents to the person or by registered mail to the address at which the person resides, or by registered mail to a forwarding address provided by the tenant.

Residential Tenancy Regulation 43(2) allows for documents to be given to a person by emailing a copy to an email address provided as an address for service by the person.

In the case before me, the landlord confirmed that the address they used to send the application package to the tenant was her place of employment and to an email which was not given by the tenant in writing for service of documents. The landlord also did not have a forwarding address for the tenant.

I therefore find the landlord submitted insufficient evidence that they served the tenant their application for dispute resolution and notice of this hearing in a manner required by the Act and Regulation

Both parties have a right to a fair hearing and the tenant would not be aware of the full claim against them without having been served the Notice of a Dispute Resolution Hearing and original application as required by the Act.

I therefore dismiss the landlord's application, **with leave to reapply**.

As I have not considered the merits of the landlord's application, I dismiss their request to recover the cost of the filing fee, without leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

Although I have dismissed the landlord's application, I have not ordered the landlord to return the tenant's security deposit and pet damage deposit, as the tenant has not provided a written forwarding address to the landlord.

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: May 20, 2021

Residential Tenancy Branch