



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNSDS-DR

Introduction and Preliminary Matters

This Review Hearing dealt with cross-applications filed by the parties. On November 13, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 19, 2020, the Tenant made an Application for Dispute Resolution seeking a return of the security deposit pursuant to Section 38 of the *Act*.

A Dispute Resolution proceeding was originally set down for March 4, 2021 and a Decision was rendered on that same day. The Tenant applied for Review Consideration of that Decision on March 5, 2021 and was granted a Review Hearing. This Review Hearing was set down to be heard on June 7, 2021 at 11:00 AM.

Tenant S.M. attended the Review Hearing. C.A. and J.A. attended the Review Hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

As per the Review Consideration Decision dated March 10, 2021, the Tenant was Ordered to “serve a copy of this Review Consideration Decision to the landlord. I further order the tenant(s) to serve the landlord with their current address for service together with the notice of hearing and decision.” The Tenant was also Ordered to serve the aforementioned documents to the Landlord within 3 days of receipt of this Decision. It was also stipulated that “At the new hearing, the tenant(s) will be required to demonstrate how the documents outlined above have been served to the landlord.”

The Tenant advised that he served this package to the Landlord by regular mail on March 12, 2021. He stated that his girlfriend witnessed this service; however, he did not provide any proof of service to confirm that he complied with the above instructions in the Review Consideration Decision. When he was asked why he served this package by regular mail, he stated that he was not familiar with the process.

C.A. advised that the Landlord never received such a package from the Tenant and the only reason she was aware of this hearing was because a courtesy copy of the new Notice of Hearing package was sent to her by the Residential Tenancy Branch. Otherwise, she would not have known of this hearing. Furthermore, she has no idea why this Review Hearing was granted.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. The Review Consideration Decision provided the Tenant with clear instructions for service and he was reminded that he would be required to demonstrate how the documents outlined above have been served to the Landlord. However, he had insufficient evidence to substantiate that these documents were ever served to the Landlord.

Moreover, I note that the Tenant allegedly served these documents by regular mail, which is not a recognized form of service of documents under Section 89 of the *Act*. While he claimed that he was not aware of his obligation to serve documents in a specific manner, I find it important to note that he originally made an Application for Dispute Resolution and was provided with instructions for service. In that package, he was also given information on how to attend the hearing. While he was provided with the appropriate information to call in to participate in the original hearing, he claimed that he was of the belief that he would be called instead. With respect to the Notice of Hearing package for the Review Hearing, I am satisfied that he would have again been provided with instructions for service.

Clearly, the Tenant has been provided with multiple Notice of Hearing packages with detailed instructions. However, he has failed to comply with those instructions on all occasions. As the Tenant did not demonstrate how the documents outlined above, as required by the Review Hearing Decision, have been served to the Landlord, and as I am satisfied that the Tenant has repeatedly not complied with the instructions provided to him with the Notice of Hearing packages, I am not persuaded that the Tenant served the Landlord with the documents he was Ordered to serve.

As the Tenant has not complied, I dismiss this Application and I confirm the original Decision and Order dated March 4, 2021.

Conclusion

Based on the above, I confirm the original Decision and Order dated March 4, 2021.

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: June 7, 2021

Residential Tenancy Branch