



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:47 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlords, represented by property managers GP (the landlord), MW and MS, attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

The landlord affirmed the tenant moved out on October 19, 2020 and did not provide his forwarding address.

On February 10, 2021 the landlords' application for an order for substitute service was dismissed:

I find I cannot conclude from this that the tenant would receive the Application for Dispute Resolution and have actual knowledge of the landlord's Application if it is served to the tenant's e-mail address.

Therefore, the landlord's application for substituted service of the Application for Dispute Resolution and supporting documents to the tenant's e-mail address is dismissed with leave to reapply.

The landlord affirmed the last email he received from the tenant was in October 2020 and the tenant did not provide an email address for service. The landlord emailed the notice of hearing to the tenant on May 20, 2021 and did not obtain a response.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

Regulation 43(2) states:

For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

Based on the landlord's testimony, I find the tenant did not provide an email address for service and cannot be served by email.

Thus, I find the tenant (respondent) was not served in accordance with Regulation 43(2) or section 89 of the Act. The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for a monetary order and for an authorization to retain the security deposit with leave to reapply

I dismiss the landlord's application for an authorization to recover the filing fee 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: June 09, 2021

Residential Tenancy Branch