



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords both attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlords testified that the tenant has not provided a forwarding address as at the date of the hearing. The landlords gave evidence that they served the tenant with the notice of application and evidence by registered mail sent to the address of the tenant's family members with whom they believe the tenant is currently residing. The landlords submitted a valid Canada Post tracking number as evidence of service.

Issue(s) to be Decided

Are the landlords entitled to any of the relief sought?

Background and Evidence

The landlords provided undisputed evidence regarding the following facts. This periodic tenancy began on August 1, 2017 and ended on July 31, 2019. The tenant provided a security deposit of \$550.00 and pet damage deposit of \$450.00 which are still held by the landlords. The tenant has not provided a forwarding address in writing, or at all, since the tenancy ended.

The landlords seek a monetary award of \$5,090.88 for the cost of repairs to the rental unit required due to the tenancy and unpaid rental arrears.

Analysis

Section 89(1) of the *Act* details the manners in which an application for dispute resolution may be served on a party and provides, in relevant parts:

89 (1)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:

...

(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

The landlords submit that the address at which they have served the tenant by registered mail is the address at which they reside with family members. The landlords gave some evidence that they received an incoming phone call from the tenant after the date on which the hearing package was served which they did not answer or respond to, and they have concluded that the tenant was served based on the evidence of a phone call.

I am unable to agree with the landlords' conclusion. I find insufficient evidence that the address to which the landlords sent the registered mail is the address at which the tenant resides. I find the testimony of the landlords to be insufficient to find that the tenant resides at the address used or that they have been served with the hearing materials. I find the landlords' claim that they were told that this would be sufficient service to have no authority or force under the *Act*.

Based on the evidence I am unable to find that the tenant has been served in accordance with the *Act* or at all.

Consequently, I dismiss the landlords' application with leave to reapply.

The landlords apply for authorization to retain the security and pet damage deposit for this tenancy.

Section 39 of the *Act* provides that:

- 39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
 - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I accept the undisputed evidence of the landlords that this tenancy ended on July 31, 2019 and the tenant has not provided a forwarding address as at the date of the hearing. Therefore, I find that as the tenant has not provided a forwarding address in writing within one year after the end of the tenancy the tenant has extinguished their right to claim against the deposits and the landlord is entitled to retain the security and pet damage deposit for this tenancy.

Conclusion

The landlords' application is dismissed in its entirety 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: July 27, 2021

Residential Tenancy Branch