Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Advantage Property management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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 loss under the Act, the Residential Tenancy Regulation (the regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:29 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 landlord, represented by agent FA (the landlord), attended the hearing and was 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

The landlord affirmed he emailed the notice of hearing and the evidence (the materials) to the tenant's email address recorded on the cover page of this decision on March 21, 2021. The landlord submitted into evidence the email sent to the tenant. The landlord affirmed he communicated with the tenant during the tenancy by emails sent to the tenant's email address. The tenancy agreement indicates the tenant's email address.

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) provides:

> 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.

Residential Tenancy Branch Policy Guideline 12 states:

> To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

In the hearing I accepted service of the materials. However, after carefully reviewing the Act and the Regulation, based on the landlord's testimony and the tenancy agreement signed on August 31, 2015, I find the landlord failed to prove, on a balance of probabilities, that the tenant provided an email address for service of documents. The communication between the landlord and the tenant during the tenancy by email does not authorize the landlord to serve documents by email. The tenant must provide an email address for service, as required by Regulation 43(2) of the Act. There is no evidence to demonstrate that the tenant provided an email address for service of documents.

Based on the foregoing, I find, on a balance of probabilities, the landlord did not serve the materials in accordance with section 89 of the Act.

Conclusion

I dismiss the landlord's application for a monetary order and for an authorization to retain the tenant's deposit with leave to reapply. Leave to reapply is not an extension of the timeline to apply.

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: August 13, 2021

Residential Tenancy Branch