



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The landlord, his agent and the tenant, T.E. attended the hearing via conference call and provided affirmed testimony. The tenant, K.S. did not attend and was not represented.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord and the tenant, T.E. (the tenant) confirmed the landlord served the tenants with the notice of hearing package via email on May 29, 2021. The landlord stated that the tenants were each served with copies of the submitted documentary evidence via 2 emails on September 13, 2021. The tenant disputed that only 1 of the 2 emails was received and that it contained only 12 document files. The landlord was not able to provide any supporting evidence on service of the evidence. The tenant stated that he submitted a text file, video file and an audio file to both the Residential Tenancy Branch and the Landlord. The landlord confirmed receipt of the email, but that all of the files

appear to be corrupted and that the landlord was unable to open and view those files. A view of the Residential Tenancy Branch File revealed only 1 MP4 file that was received late on October 13, 2021. The tenant attempted to locate his email confirmation of evidence submission but was unsuccessful.

I accept the affirmed testimony of both parties and find that the tenant, T.E. was sufficiently served with the notice of hearing package as per section 71 of the Act. However as the tenant, K.S. was not present and unrepresented, I find that she was not properly served. The application against the tenant, K.S. in this hearing was dismissed with leave to reapply.

I find on a balance of probabilities that the tenant, T.E. was sufficiently served with the landlord's first email document evidence submission which contained 12 document files as per section 71 of the Act. On the remaining 2nd email document evidence submission, I find that the landlord was unable to provide sufficient evidence to satisfy me that the tenants were served and as such is excluded from consideration in this hearing.

I find that the tenant while he served the landlord with his documentary evidence via email the landlord confirmed receipt of it, but that none of the files were unviewable as they were somehow corrupted. On this basis, I find that the tenant's documentary evidence is excluded from consideration in this hearing.

At the outset, the landlord's monetary claim was discussed. The landlord confirmed that an RTB-37, Monetary Order Worksheet was not completed by the landlord. The landlord stated that a detailed breakdown of the monetary claim was contained in 1 of the evidence files listed as "cost summary". An extensive search was made throughout the 68 documentary evidence files submitted but was unsuccessful. The tenant also indicated that he was also not in possession of such a file. Discussions took place in which the landlord stated that he was not able to navigate through his documentary evidence submissions and as such not able to provide any details of the monetary claim. On this basis, the landlord's application was dismissed with leave to reapply as no monetary claim details were available to review from the landlord. Leave to reapply is not an extension of any applicable limitation period.

Both parties were cautioned that if the landlord is to file another application for dispute to read in detail the notice of hearing package information; seek assistance by reviewing the Residential Tenancy Branch Website or asking questions with an information officer at the Residential Tenancy Branch Information Line.

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: October 19, 2021

Residential Tenancy Branch