



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG THE RESIDENTIAL GROUP
REALTY and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, 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, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") 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 agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that he was not recording this dispute resolution hearing.

The agent confirmed the landlord's email addresses for service of this decision.

This hearing originally convened on November 1, 2021 before a different arbitrator and an Interim Decision dated November 1, 2021 (the "Interim Decision") was drafted. The Interim Decision stated:

An order for substituted service was granted by an adjudicator in a decision dated May 3, 2021. The decision and order permitted the landlord to serve the tenant with a copy of the Application, the Notice of Dispute Resolution Proceeding, a copy of the substituted service order, and supporting documents and written evidence, to the tenant's email address.

It is worth noting that the decision of May 3, 2021 specifically ordered that the landlord:

[. . .] provide proof of service of the e-mail which may include a printout of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant. (see page 3 of Decision, dated May 3, 2021)

Equally worth noting is that there was, however, no documentary proof of service as ordered and required by the decision of May 3, 2021. The landlord's representative testified that he attempted on several occasions to upload a copy of a proof of service document and was certain that he had.

Unfortunately, there did not appear to be any sort of confirmation that the documentation had been successfully uploaded. I have no doubt, based on the landlord's evidence, that he tried to upload the required documentation. It is almost certain that the Dispute Management System (the program that provides the Branch with its dispute file management) caused unexpected technical issues and simply did not permit the uploads.

Given that there is merit to the landlord's application, and taking into consideration the landlord's diligence, it is my conclusion that an adjournment of this matter is necessary. It is necessary so that the landlord be afforded the opportunity – an opportunity denied to them because of a technical barrier of the Branch's online system – to submit proof of service. Uploads of new evidence (that is, proof of service of the original Notice of Dispute Resolution Proceeding package and the more recent Notice of Dispute Resolution Proceeding) will be permitted.

[Emphasis added]

The agent testified that the tenant was served with the landlord's original application for dispute resolution via email on May 7, 2021. The May 7, 2021 serving email was not entered into evidence. The agent testified that it was not clear to him that he had to provide proof of service of the original application for dispute resolution in this hearing.

Pursuant to the Interim Decision, I find that the November 1, 2021 hearing was adjourned to allow the landlord an opportunity to upload proof of service of the original application for dispute resolution, which was not uploaded for the November 1, 2021 hearing due to technical difficulties. The underlined section of the Interim Decision reproduced above makes this requirement clear.

Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

I find that the agent has not proved, on a balance of probabilities, that the landlord's original application for dispute resolution was served on the tenant via email on May 7, 2021 because no proof of service documents pertaining to the May 7, 2021 email or the May 7, 2021 email itself were entered into evidence. I find that the landlord was provided with ample time following the November 1, 2021 hearing to upload the proof of service documents which the Interim Decision stated were required. The landlord's application for dispute resolution is dismissed with leave to reapply for failure to prove service in accordance with the *Act*

I find that since the landlord's application for dispute resolution was dismissed, the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I dismiss the landlord's application to recover the \$100.00 filing fee without leave to reapply.

The remainder of the landlord's application is dismissed 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: December 14, 2021

Residential Tenancy Branch