



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. 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.

The landlord KW attended the hearing (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified the co-landlord AM served one of the tenants SG with the Notice of Dispute Resolution Hearing by email twice: once at 3:56 p.m. on Monday, July 12, 2021 and again at 2:13 a.m. on July 13, 2021. The landlord testified SG’s Notice of Dispute Resolution Hearing was sent to **g.....s.....15@gmail.com**. The landlord testified that this email address was not provided to him as an address for service of documents by SG, however the parties had previously communicated using this email address in the past when discussing the issue of the tenant giving the landlord a proper notice to end tenancy.

The landlord was unable to advise me whether the second tenant, MK was served with the Notice of Dispute Resolution Hearing.

I asked the landlord whose email address appears on the tenancy agreement directly below one of the tenant telephone numbers, **s....m....in@gmail.com**. The email address did not closely match either of the tenants’ names. The landlord was unable to advise me whose email address that was.

Analysis

Rule 3.5 of the Residential Tenancy Branch Rules of Procedures states:

3.5 Proof of service required at the dispute resolution hearing

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.

Section 43(2) of the Residential Tenancy Regulations 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.

In this case, simply because the tenant SG sent an email to the landlord using the stated email address does not necessarily mean SG has expressly provided that address as an address for service. In order for me to be satisfied SG is willing to accept service by email, I require SG's expressed consent to do so. No evidence was provided by the landlord to indicate SG has done so. Consequently, I find the landlord has not served SG in accordance with section 89 of the *Act* or section 43 of the Regulations and the application against SG is dismissed with leave to reapply.

The landlord was unable to provide sufficient testimony or direct my attention to any evidence to satisfy me the co-tenant MK was served with the Notice of Dispute Resolution Proceedings. Consequently, the application against MK is likewise dismissed with leave to reapply.

Conclusion

The application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*.

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: January 07, 2022

Residential Tenancy Branch