Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-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 unpaid rent, pursuant to section 26;
- an authorization to retain the tenant's security deposit, under section 38;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:43 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord, represented by site manager KW (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 wishes to withdraw the application against tenant ES and to proceed only against tenant CM.

Pursuant to my authority under section 64(3)(c) of the Act, I amend the application to withdraw the claims against tenant ES.

The landlord was authorized to serve tenant CM the notice of hearing and the evidence (the materials) by email. The substitute service decision dated August 27, 2021 states:

> For this reason, I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by e-mail to Tenant C.M. at the e-mail address indicated on the first page of this decision.
> **I order the landlord to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served Tenant C.M. in accordance with this order**. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by Tenant C.M.
> […]
> The landlord is granted an order for substituted service. The landlord may serve Tenant C.M. the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, along with a copy of this substituted service decision, to Tenant C.M.'s e-mail address as set out above.
> […]
> I dismiss the landlord's application for substituted service to Tenant E.S. with leave to reapply.
>
> (emphasis added)

The landlord affirmed he served tenant CM the materials and the substitute service decision by email on August 31, 2021.

Residential Tenancy Branch Policy Guideline 12 states:

> The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

I find the landlord failed to prove service of the materials in accordance with the substitute service decision, as the landlord did not submit a print-out of the email or a confirmation of delivery receipt. The landlord must prove service of the materials to the tenant's email address recorded on the cover page of the substitute service decision.

Based on the foregoing, I dismiss the landlord's application for a monetary order with leave to reapply. Leave to reapply is not an extension of timeline to apply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I dismiss the application 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: February 28, 2022

Residential Tenancy Branch