



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 29, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- I want the tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy - request to retain security and/or pet damage deposit

The Landlords attended the hearing and provided affirmed testimony. However, the Tenants did not appear.

The Landlords testified that they sent the Notice of Hearing and evidence to the Tenants by email on October 25, 2021.

The Landlords stated that they have emailed the Tenants before at this email address, but when they sent this application package to the Tenants, there was no response or acknowledgement of the package. The Landlords stated they did not try to serve the Tenants in any other manner. The Landlords confirmed they received the Tenants' forwarding address, in writing, at the move-out inspection on September 1, 2021, but the Landlords chose to send the documents via email, rather than by mail to the forwarding address. The Landlord did not apply for an order for substituted service, which does, in certain circumstances, allow the applicant to serve the respondent in a method not listed under section 88 or 89 of the Act.

I note the following portion of the Act regarding how a Landlord must serve the Tenant with this application package:

89 (1) *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.*

The Landlords did not serve in any of the above methods, and only sent the Notice of Hearing by email, which the Tenants did not acknowledge or respond to. I note the following Policy Guideline #12 with respect to the service of documents:

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service (see "Orders for substituted service" in section 13 below).

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email.

[...]

Email service

o 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 order for the Landlord to serve the Tenants with this Notice of Hearing and evidence via email, the Landlords would have had to obtain an Order for Substituted service prior to this hearing, permitting them to serve the Tenants in a manner not specifically laid out under section 89 (1) above, or the Landlord could have sent this documentation by email if there was sufficient evidence to show the Tenants specifically provided their email address to the Landlord as an address for service of important documents. Typically, this would be done expressly, and in writing. No Substituted Service Order was applied for, and there is no evidence to show the Tenants specifically gave the Landlord an email address for service purposes. I do not find using email occasionally, throughout the tenancy is sufficient to demonstrate that this was an address provided to the Landlords, by the Tenants, for service purposes.

Ultimately, I find there is insufficient evidence that the Tenants were served in accordance with any of the allowable methods of service under section 89 of the Act. Although email service is acceptable in some limited circumstances (by substituted service order, or through a separate agreement to serve via email), I note the Landlords have not sufficiently met those criteria, such that I could find they have properly served the Tenants with this Notice of Hearing.

Since the Notice of Dispute Resolution has not been sufficiently served, I dismiss the Landlords' application for monetary compensation for damage to the rental unit, with leave to reapply. However, I also note the following portion of *Policy Guideline #17 – Security Deposit and Set-off*:

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. *The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- *a landlord's application to retain all or part of the security deposit; or*
- *a tenant's application for the return of the deposit.*

unless the tenant's right to the return of the deposit has been extinguished under the Act¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

In accordance with the above noted policy guideline, I order the Landlords to return the security and pet deposit, totalling \$1,200.00. A monetary order will be issued to the Tenants for this amount. However, it is worth noting that the Landlords are granted leave to reapply for monetary compensation for damage caused by the Tenants, and a

separate hearing will likely be required for those items. The Landlords may wish to discuss matters and settle any amounts owed outside of the dispute resolution process. However, the Landlords may apply for dispute resolution to obtain monetary compensation, should any discussions with the Tenants not yield acceptable outcomes.

Conclusion

The Landlord's application is dismissed, with leave.

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$1,200.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 29, 2022

Residential Tenancy Branch