



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on April 20, 2022. The Landlord applied for a monetary order for unpaid rent, a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site, or property, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord and their Agent (the "Landlord") attended the proceedings and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the Tenant had been served the Application for Dispute Resolution and Notice of Hearing documents by email on June 11, 2022; the Landlord submitted a copy of the email into documentary evidence.

Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

Documents that must be served with the Notice of Dispute Resolution Proceeding Package

“The applicant must, within **three days** of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].”

I noted that the Notice of Hearing package had been provided to the Landlord on May 19, 2022. The Landlord was asked to explain why the Notice of Hearing documents took so long to serve on the Tenant. The Landlord testified that they had been attempting to serve the Tenant in person. Although I find that the Landlord has served the hearing documents late, I do find that the Tenant had been served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site, or property?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Landlord recorded on the application for these proceedings that this tenancy began on January 1, 2022, that the rent for this tenancy had been \$395.00 per month and that the Tenancy ended on April 5, 2022.

The Landlord testified that they did not create a written tenancy agreement for this tenancy. The Landlord was informed that the Act requires a written tenancy and asked to explain why they had not created one, the Landlord responded that they did not have anyone to help them and that no one at the Residential Tenancy Branch (RTB) would help them with their tenancy documents. The Landlord also testified that they have had previous hearings with the RTB and that no one had ever told them they needed to have written tenancy agreements.

The Landlord was asked to provide documentation to show that they had a tenancy agreement with the respondent listed in their application for these proceedings. The Landlord testified that they only had a scrap of paper with the Tenant's student number written on it they provided a handwritten scrap of paper into documentary evidence.

When asked how they were paid rent, the Landlord testified that all rent payments had been made in cash and that they did not provide receipts for these payments.

The Landlord was provided with the opportunity to submit documentation to show a landlord/tenant relationship with the responded named in this case. The Landlord testified that they had no other documentation.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlord that there was no signed tenancy agreement between these parties for the rental unit.

During these proceedings the Landlord was advised of section 13 of the *Act* which requires a landlord to create a written tenancy agreement, section 13 of the Act states the following:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

I find that the Landlord, in this case, is in breach of section 13 of the Act by not ensuring that a written tenancy agreement was signed between the parties to this dispute. In the absence of that document, I must rely on the additional documentary evidence provided

by the applicant/Landlord to prove that a tenancy agreement existed between these parties.

I have reviewed all of the documentary evidence submitted by the Landlord including a Whatsapp chat, a student number, and an email, and I find that there is insufficient evidence before me to prove that a tenancy agreement existed between these parties for the rental unit in question in these proceedings. Therefore, I must dismiss the Landlord's application in its entirety.

Throughout these proceedings, the Landlord offered several reasons why they should be excused from the *Act's* requirement to have a written tenancy agreement. The Landlord and their Agent were encouraged to seek out guidance regarding their rights and responsibilities as a landlord under the *Act* with either the RTB or legal counsel.

Conclusion

I dismiss the Landlord's claim in its entirety.

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 23, 2023

Residential Tenancy Branch