



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for a monetary order and a request to retain the security and pet damage deposits for unpaid rent pursuant to section 67 of the Act
- for a monetary order for damages and a request to retain the security and pet damage deposits pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord MB appeared. The tenants did not appear. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord testified that he served the dispute notice and materials on the tenants TF and KF by email pursuant to an order for substitutional service granted to the landlord on December 5, 2022. He did not provide proof of service in evidence. He further testified that he served tenant RF by email pursuant to an agreement between the landlord and tenant to serve each other with documents by email. He did not provide proof of that agreement in evidence.

RTB Rules of Procedure 3.5 states in part:

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.

The substitutional service decision allowing the applicant to serve the Dispute Notice and evidence package clearly stated that the applicant was required to provide proof of service of the dispute notice and evidence package. The applicant landlord was required by the decision to submit proof that the emails were sent to the respondents TF and KF. The substitutional service decision stated:

I order the landlord to provide proof of service of the e-mails which may include printouts of the sent items, confirmation of delivery receipts, or other documentation to confirm the landlord has served the tenants in accordance with this order. If possible, the landlord should provide read receipts confirming the e-mails were opened and viewed by the tenants.

The applicant landlord did not provide proof of service.

Sections 88 and 89 of the Act do not allow the parties to serve each other by email. Section 43 of the Residential Tenancy Regulation allows for service by email to an email address provided as an address for service by the person. The applicant landlord did not provide proof that tenant RF provided an email address as an address for service.

I find that the landlord has not established that the tenants were served with the dispute notice and evidence package as required by the Act, the Residential Tenancy Regulation, and the substitutional service decision. Therefore, the application is dismissed. The landlord has leave to reapply to the RTB.

Conclusion

The 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: March 30, 2023