



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (Application) filed by the Landlord under the *Residential Tenancy Act* (the Act), on February 25, 2022, seeking:

- Recovery of unpaid rent and/or utilities;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Retention of the security deposit.

The hearing was convened by telephone conference call on April 13, 2023, at 1:30 pm and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend, and no documentary evidence was submitted by the Landlord for my consideration.

The Landlord was advised that inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that personal recordings of the proceedings were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. Residential Tenancy Branch (Branch) records indicate that the paper Application was originally filed on February 25, 2022, but could not be processed as an address for service was not provided for either the Landlord or the Tenant, and the declaration on the last page of the Application was not signed. In the Application the Landlord indicated that their preferred method of contact was email

and provided an email address. On March 8, 2022, and March 16, 2022, emails were sent to the Landlord at the provided email address indicating that updates to the Application were required and providing information on how to update the Application.

On March 16, 2022, the Landlord submitted an Application for Substituted Service, which was dismissed with leave to reapply on March 31, 2022. Records at the Branch indicate that on April 28, 2022, a further email was sent to the Landlord advising them that the Application appears to be inactive and providing them with information on how to withdraw the Application if the hearing is no longer required. On August 4, 2022, the Landlord re-submitted the Application, still missing an address for service for the Tenant, the hearing date was set, and the Notice of Dispute Resolution Proceeding (NODRP), which contains the Application and the hearing details, was emailed to the Landlord, for service on the Tenant not later than August 7, 2022. Reminder emails about evidence service deadlines and the hearing were also sent to the Landlord on March 30, 2023, and April 10, 2023.

At the hearing the Landlord denied receipt of the NODRP, stating that they received only the most recent reminder email, which contained the information required to call into the hearing. The Landlord also acknowledged that they had not served the Tenant with the NODRP, as they had not received it.

I have reviewed the above noted emails and I am satisfied that they were sent as set out above. Further to this, I note that the email address used for the Landlord matches the email address provided for them in their Application, and that it is the same email address used to send the most recent reminder email, which the Landlord acknowledged receiving. As a result, I am satisfied that the NODRP was provided to the Tenant by email, as per their request, at their provided email address, on August 4, 2022. Further to this, I note that the Landlord made no attempts to contact the Branch to obtain the NODRP.

As a result of the above, I am satisfied that the Landlord failed to serve the Tenant with the NODRP as required by section 59(1) of the Act and Rule 3.1 of the Rules of Procedure. I am also satisfied that this failure arose because of the Landlords own actions, or their lack of due diligence.

Although the Landlord requested an adjournment to allow them to serve the Tenant with the NODRP and documentary evidence, I denied their adjournment request as I am satisfied that their failure to serve the NODRP and evidence on the Tenant, or submit

their documentary evidence to the Branch for my consideration, is a result of their own lack of due diligence with regards to monitoring the email address provided by them in the Application, and their failure to read and/or understand the Act and the Rules of Procedure.

The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Tenant was not served with the NODRP, I find that they did not have a fair opportunity to know the case against them or appear in their defense. As a result, the Application is dismissed with leave to reapply, except for the claim for recovery of the filing fee, which is dismissed without leave to reapply.

Conclusion

The Landlord's Application is dismissed with leave to re-apply, except for the claim for recovery of the filing fee, which is dismissed without leave to reapply. This is not an extension of any statutory deadline.

The Landlord hung up while I was attempting to confirm how they wished to receive the decision. As a result, it will be mailed to the rental unit address and sent by email.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: April 13, 2023

Residential Tenancy Branch