



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution (Application) filed by the Tenant under the *Residential Tenancy Act* (the Act) on January 27, 2023, seeking:

- Compensation for monetary loss or other money owed; and
- The return of all or a part of their security deposit.

The hearing was convened by telephone conference call at 1:30 pm on June 9, 2023, and was attended by the Tenant and the Landlord. All testimony provided was affirmed. The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that personal recordings of the proceeding were prohibited and confirmed that they were not recording the proceedings.

Section 59(3) of the Act and rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent(s) must be served with a copy of the Application and Notice of Hearing within three days of it being made available to the applicant(s) by the Residential Tenancy Branch (Branch). Section 89(1) of the Act sets out how these must be served.

Records at the Branch indicate that the Notice of Dispute Resolution Proceeding (NODRP), which includes a copy of the Application and the Notice of Hearing, was made available to the Tenant by email on February 7, 2023. The Tenant stated that they sent the NODRP to the Landlord by email and submitted a screen shot of an email sent to the Landlord on February 16, 2023, with an attachment titled "Dispute Notice...".

Email is only an approved method of service for the NODRP under section 89(1) of the Act, if the circumstances set out under section 43(2) of the regulations apply. As the Tenant did not provide a copy of the tenancy agreement stating that email was an approved method of service for the Landlord, and providing the email address for service, and the Landlord denied that any such clause or agreement was in place between them, I find that the circumstances set out under section 43(2) of the Act do not apply here. As a result, I find that the Tenant was not entitled to serve the Landlord with the NODRP by email. Although the Tenant argued that they filed an Application for Substituted Service requesting approval to serve the Landlord by email, no such application was before me for consideration and the Application was filed by the Tenant themselves online.

Further to this, the email was sent well past the deadline set out under section 59(3) of the Act and rule 3.1 of the Rules of Procedure. Finally, I am satisfied that the Landlord was not even aware of the above noted email from the Tenant until the hearing, and that they became aware of the proceeding through auto-generated emails sent to them by the Branch and subsequent inquiries to the Branch, as indicated by Branch records. As a result, the Application is dismissed with leave to reapply due to lack of proper service on the Landlord by the Tenant.

Conclusion

The Tenants' Application is dismissed with leave to re-apply. This is not an extension of any statutory deadline. As the parties could not agree on whether a forwarding address had been provided in writing by the Tenant to the Landlord, and no documentary evidence was before me to support a finding that it was, and if so, how, and when, I have made no orders in relation to the security deposit.

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

Dated: June 9, 2023

Residential Tenancy Branch