



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit in the amount of \$6,375 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's husband ("**PO**") also attended the hearing.

Preliminary Issue – Service of Documents

The landlord testified that he served the tenant with the notice of dispute resolution form and supporting evidence package via email on April 2, 2020. The tenant testified that she was unable to open any of the photographs that were attached to this email. She testified that she was able to open the notice of dispute resolution form and an invoice which were attached. The documents that she was able to open were saved in the .pdf format. The photographs were saved in the .jpeg format.

While not ordinarily allowed under the Act, service by email is permitted pursuant to the Director's Order made March 30, 2020.

However, I do not understand the Director's Order to amend the Rules of Procedure. Rule 3.10.5 states:

3.10.5 Confirmation of access to digital evidence

[...]

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

[...]

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

As such, I find that the landlord was required to confirm with the tenant that she could view the photographs attached to the April 2, 2020 email. It is not the responsibility of the tenant to inform the landlord that she could not view the files.

In the circumstances, I do not find it appropriate to exclude the photographs from evidence that is to be considered at the hearing. The tenant provided no documentary evidence in response to the landlord's claim and the landlord stated that the basis for his claim lies in the photographs.

Instead, I order that this hearing is adjourned and be reconvened at a later date pursuant to section 74 of the Act. Notices of Reconvened hearing are enclosed with this interim decision.

I order the following with regards to service of documents:

- 1) The landlord stated that he could convert the photographs into pdfs. The landlord must, by May 30, 2020, email the photographs in pdf format to the tenant at the email address on the cover of this decision.
- 2) The tenant must, within two days of receiving the photographs, email the landlord advising him whether or not she is able to view the photographs.
- 3) The tenant may serve documentary evidence in response to the landlord's claim to the RTB and by email to landlord at the address on the cover of this decision by June 15, 2020.
- 4) The landlord must, within two days of receiving the tenant's documentary evidence, email the tenant advising her whether or not he is able to view the tenant's evidence.
- 5) Both parties must provide the RTB with copies of the confirmation emails received from the other no later than seven days before the reconvened hearing.

This adjournment is not an opportunity for the landlord to submit additional evidence or to amend his application, or for the tenant to make a cross-claim against the landlord.

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: May 25, 2020