

## **Decision**

**Dispute Codes:** MNR, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for money owed for rent, compensation for damages or loss under the Act and an order to retain the security deposit in partial satisfaction of the claim. In attendance was the Landlord, both tenants of unit 501A, Mr. K and Mrs. K and two individuals, Mr. M and Mrs. M, that the landlord contended represented the late tenant of unit 501, (MK).

### **Background**

On July 23, 2008, a previous hearing regarding rental unit 501A was held under file 718911 on the Landlord's application under section 55 and 67 with these same parties named as respondents: Mr. and Mrs. K were named as tenants and Mr. & Mrs. M were named as executor/representatives of MK, a deceased tenant of unit 501.

The Landlord's position at that earlier hearing was apparently that the tenancies for unit 501 and unit 501A must be considered as a single tenancy, rented and paid for as one unit, and that the responsibility for rental arrears being claimed should be jointly bourn by Mr. and Mrs. K who lived in 501A and the Estate of MK who had been residing in 501, prior to her passing away. However, the Dispute Resolution Officer who heard file 718911, determined that Mr. & Mrs. K, tenants of unit 501A, were in a completely separate tenancy from that of unit 501, and that no rental arrears had accrued for unit 501A. The Dispute Resolution Officer dismissed the landlord's rent claim against Mr. K and Mrs. K of 501A and also dismissed the landlord's application for an order of possession for 501A. The Dispute Resolution Officer further found that the landlord's application was not dealing with unit 501 at all because the rental unit identified in the application was 501A. The Officer also accepted the testimony of Mr. and Mrs. M who

testified that they were not representing the Estate of MK, the late tenant who had occupied unit 501.

The outcome of a request for review consideration applied for by the Landlord and considered on August 20, 2008 was that the application was dismissed because it was found that the landlord had failed to apply within the deadline and the landlord's request for an extension was not granted.

I note that there were no findings made during the previous proceeding in regards to damages. The issue before me at this hearing is on the subject of a damage claim and barring other impediments can proceed on its merits..

In the application before me today, the "Dispute Address" was identified on the application form as unit 501, however two of the respondents identified were Mr. & Mrs. K, who the previous dispute resolution officer had found were not affiliated with unit 501 in any respect and were deemed to be separate tenants of unit 501A.

The other two respondents named by the landlord in this application were Mr. and Mrs. M, again identified as representatives of the estate of MK. However, it had already been found as a fact at the hearing held on July 23, 2008 that these same individuals were *not* executors of MK's estate and that decision still stands.

### **Issue(s) to be Decided**

Prior to proceeding with the hearing, it must first be established whether or not the correct parties to the dispute were named and have been properly served:

- Has the landlord validly served the tenant or estate of unit 501 with the Hearing application claim for damages?

Once service has been determined to have occurred, then the issues to be decided are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rental arrears owed, damages or losses

relating to unit 501 that was occupied by the late MK. This determination is dependant upon answers to the following questions:

- Has the landlord established proof that the specific amount of compensation being claimed is validly owed by the particular tenant to this landlord?
- Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?

### **Analysis**

#### **Service Issue**

On the issue of service, Rule 3.1 of the Dispute Resolution Proceedings Rules of Procedure requires that, along with the copy of the Application for Dispute Resolution, the applicant must serve each respondent with copies of

- the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- the details of any monetary claim being made, and
- any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

The burden is on the Applicant to prove that the respondent(s) had been properly served.

Because part of the claim in regards to unit 501 is against the Estate of MK, it follows that service to this particular respondent is critical to a claim against MK or the Estate of MK.

I find that the landlord has not served the respondent, MK or the estate of the late tenant, MK, who resided in 501, which is the "Dispute Address", specified on the application. I find that two of the four respondents who have been served, namely Mr. M and Mrs. M, are not a party to the proceedings at all and do not represent the estate of MK.

The argument submitted by the Landlord that Mr. M and Mrs. M are actually, themselves, responsible for some of the losses and missing property in relation to unit 501, cannot be heard in this proceeding as these individuals are not tenants nor do they represent the tenant's estate. The residential tenancy Act only applies to landlords and tenants, not third parties who are neither. As such, I find that I have no jurisdiction to contemplate any claims against Mr. M and Mrs. M.

However, I find that the other two parties named in this dispute as respondents were properly served and did attend the hearing. The other two parties served, Mr. K and Mrs. K, are tenants of another separate unit in the complex, that being unit 501A, and the Landlord testified that the claim against these tenants has been made for the damages and losses that Mr. K and Mrs K, tenants from 501A, caused to the other vacant unit, unit 501.

I find that any tenants can certainly be held accountable to compensate for damage that the tenants caused to other areas of a complex, provided that this is proven to the satisfaction of the Dispute Resolution Officer. That being said, in this instance, the application specifically identified the “Dispute Address” as unit 501. If the landlord intended to claim damages against Mr. K and Mrs. K from unit 501A for costs associated with damage that these tenants did to another unit, (501), then the “*Dispute Address*” indicated on the application should be that of the tenants being claimed against, namely unit 501A. The Landlord would then be required to meet the test for damages by proving that these tenants had wrongfully entered the other unit and were responsible for perpetrating the damage being claimed.

As the Dispute Address in this application is shown to be for unit 501, then it is the tenant of 501 against whom the damage claim/application has been officially made. As found earlier in this decision, that tenant or the estate of that tenant, was not served.

Although the Landlord may have taken the position that the two units 501 and 501A are one and the same, the decision from the hearing on file 718911 had found otherwise. The fact is that one application can not be utilized to claim damages from tenants of these two distinct and separate units.

### **Conclusion**

Given the above, I find that this dispute resolution hearing for the landlord's application cannot proceed because:

- 1) the tenant or estate of the tenant from the dispute address, indicated on the application, was not properly served and
- 2) the other tenant, who I found was properly served, does not reside at the dispute address shown on the application.

Therefore, I must dismiss the landlord's application in its entirety.

As mentioned, the Landlord is at liberty to reapply and seek damages from each of the applicable parties properly served with applications indicating the correct "Dispute Address" for the specific tenant(s) against whom the particular claims are being made.

Accordingly, the landlord's application is dismissed with leave to reapply.

September 16, 2008

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