

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MN FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. The hearing was first set for hearing on October 20 at which time it was adjourned to November 25. The tenant was represented at the first date but did not attend herself. On the second date the tenant and her advocate both participated.

Issue(s) to be Decided

Has the landlord complied with the requirements of the Act with respect to service of the Application for Dispute Resolution and Notice of Hearing?

If the landlord has not complied with the service requirements, should the application be dismissed?

Background and Evidence

The landlord applied for dispute resolution on August 25 and provided evidence that the Application for Dispute Resolution and Notice of Hearing (the "Hearing Documents") were sent to the tenant by registered mail at several different addresses, including one to a residential address in Victoria, one to an address in Nova Scotia and one in care of a legal advocate known as "The Law Centre" in Victoria. The tenant submitted a letter from The Law Centre in which the director of that program advised the landlord that the centre had not been retained to assist the tenant with respect to the claim and that service on the tenant through the centre would not be effective.

At the October 20 hearing the tenant's advocate appeared and advised that the tenant had not received the Hearing Documents. When asked how the tenant had become aware of the hearing, the advocate advised that the tenant had been told by a representative of The Law Centre that a hearing was scheduled. The advocate asked

for an adjournment to permit the landlord to serve the Hearing Documents on the tenant and the landlord was provided with an address at which to serve the Hearing Documents. The request for an adjournment was granted and at the October 20 hearing I specifically instructed the landlord to serve the Hearing Documents on the tenant as soon as possible to provide her with an opportunity to respond to the claim being made against her. The reconvened hearing was scheduled for November 25.

On November 7 the tenant's advocate mailed a letter to the landlord which was also provided to the Residential Tenancy Branch in which she advised the landlord that she still had not received the Hearing Documents and reminding the landlord that she required sufficient time to prepare a response. On November 17 the tenant's advocate mailed a second letter to the landlord again advising that she had not received the Hearing Documents.

At the November 25 hearing, the tenant's advocate advised that she had received the Hearing Documents on November 19. The landlord confirmed that the Hearing Documents were served on that date. When asked why there had been a delay in serving the Hearing Documents, the landlord stated that they were busy and that in any event, they considered the Hearing Documents to be evidence which, according to the Rules of Procedure, did not have to be served until 5 days prior to the hearing. The tenant asked that the landlord's claim be dismissed.

Analysis

Section 59(3) of the Act provides that a party who makes an application for dispute resolution must serve the respondent with a copy of that application within 3 days of the time the application was made. The landlord attempted to serve the tenant within 3 days of their application on August 25 but the registered letters were returned to the landlord and the landlord was specifically advised in one instance that the advocate on whom the application had been served was not authorized to accept service.

Section 90 of the Act provides that when documents are served by registered mail, they are deemed received 5 days after mailing. However, this is a presumption which I find was rebutted when the tenant's advocate advised on October 20 that the tenant had not received the Hearing Documents. If the tenant had been avoiding service, there would have been no conceivable reason for her to arrange for an advocate to participate in the hearing to advise that the Hearing Documents had not been received and to provide an

address for service.

On October 20 the landlord was made aware that the Hearing Documents had not been received and I find that the 3-day timeframe began running again on that date. The landlord was specifically instructed to serve the Hearing Documents as soon as possible, which instructions the landlord chose to disregard. The landlord further disregarded the tenant's two separate pleas for the Hearing Documents and consciously chose to delay service. It seems apparent to me that through this delay the landlord hoped to contrive some advantage in the dispute resolution process and that the effect of this delay was to deny the tenant natural justice in depriving her of the opportunity to provide a full defense to the claim.

The landlord made the argument that the Hearing Documents should have been considered as evidence, which under the Rules of Procedure could be served as late as 5 days before the hearing. I find that the Hearing Documents cannot be characterized as evidence. While evidence may bolster a claim, the Application for Dispute Resolution sets out the nature and quantum of the claim, which the tenant would have required in order to prepare any defense whatsoever.

I find that the landlord's failure to comply with section 59(3) of the Act and with my specific instructions has caused extreme prejudice and a denial of natural justice to the tenant. I have considered whether it would be appropriate to grant an adjournment, but given the circumstances I fail to see why the tenant should be further prejudiced and have to make further appearances due to the landlord's failure to comply with the statutorily prescribed timeframes. I find that the landlord's claim must be dismissed.

Conclusion

The landlord's claim is dismissed without leave to reapply.

Dated: November 28, 2008.