



Dispute Resolution Services

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

REVIEW HEARING DECISION

Dispute Codes: MNSD and FF

Introduction

This Review Hearing was granted January 28, 2009 on an application for review consideration brought by the landlord. The original hearing was brought by the tenants who sought return of their security and pet damage deposits in double on the grounds that the landlord had failed to return it or make application to claim upon it within 15 days of the latter of receipt of the tenants forwarding address or the end of the tenancy. Following a hearing on January 6, 2009, the tenants were granted a Monetary Order for \$2,758.46.

Background and Evidence

At the commencement of the hearing, the female tenant's son advised of her passing in the period following the original hearing. Her co-tenant represented the tenants.

The landlord sought and was granted this review hearing on the grounds that the landlord had rebutted presumption of service having proven that he was out of the country at the time and for material times after the Notice of Hearing was served by registered mail.

In addition, the landlord claimed new and relevant evidence that the tenants had not, in fact, provided him with a forwarding address but had rather provided information on a bank account into which they requested the landlord place their deposits.

The Dispute Resolution Officer adjudicating the review request considered the possibility that, if that fact had been presented at the hearing, the outcome could have differed.

Analysis

In fact, on reviewing the original file and in considering the submissions of the landlord and tenant, I find that information provided to me at the original hearing was incomplete in its omission of the fact that the address provided to the landlord was information for a bank account and not an address for service..

While that information might have sufficed if the request was uncontested, the landlord gave evidence that he had cause and would have filed a counter claim if he had had an address for service on the tenants.

Conclusion

If I had had that information at the hearing, I would not have not have found that the tenants had provided the landlord with a copy of their forwarding address in writing as required by section 39 of the *Act*.

Section 82(3) of the *Act* provides that, after conducting a review hearing, I have the delegated authority to confirm, vary or set aside the decision or order under review.

In this instance, I hereby set aside my decision and order of January 6, 2009 under File No. 717483 and declare that the Order is of no effect and unenforceable.

The co-tenant remains at liberty to make a new application when he is able to provide proof that he has provided the landlord with a forwarding address in writing.

Similarly, while the landlord provided evidence of claims in damages, those could not be considered in this review of the tenant's application and the landlord remains at liberty to bring his own application on those claims.

March 11, 2009

Dispute Resolution Officer