

Decision

Dispute Codes: MNDC, MNSD

Introduction

This hearing dealt with an application by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Tenant “DBW” attended and gave affirmed testimony. The landlord was not represented at the hearing.

Issues to be decided

- Whether the landlord was properly served with the tenants’ application for dispute resolution and the notice of hearing (the “hearing package”)
- Whether the tenants are entitled to either of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from May 1 to October 31, 2008. Thereafter, tenancy continued on a month-to-month basis until on or about May 29, 2009. The tenancy agreement shows that rent of \$1,100.00 and parking of \$20.00 (total: \$1,120.00) were payable in advance on the first day of each month, and that a security deposit of \$550.00 was collected on or about May 1, 2008.

In summary, further to the return of their security deposit, the tenants seek compensation related to the alleged failure of the landlord to properly respond to complaints made by the tenants about mold in the unit. Tenant “DBW” testified that while he sent the hearing package by way of registered mail to the landlord(s) at a local address in Vancouver, BC, the landlord(s) did not claim the registered mail and it was thereafter returned to tenant “DBW.”

Analysis

Related to service of documents, section 89 of the Act addresses **Special rules for certain documents**, and provides in part as follows:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

Section 13 of the Act speaks to **Requirements for tenancy agreements**, and provides in part:

13(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (b) the correct legal names of the landlord and tenant;
- (e) the address for service and telephone number of the landlord or the landlord's agent;

The subject tenancy agreement identifies the landlord by what is presumably the landlord's correct legal name, and shows the address for the landlord in Mississauga, ON. Under the landlord's name and address as shown on the tenancy agreement, the following NOTE appears:

This is the legal name and address of the Landlord to be used for the purpose of giving notices or other documents under applicable provincial legislation and this Agreement. The tenant acknowledges the name and address of the Landlord are subject to change and in such event, the Tenant agrees to direct notices accordingly to the new Landlord.

Based on the documentary evidence and testimony tenant "DBW," I find that the name and address of the landlord for the purposes of service have not changed subsequent to the signing of the tenancy agreement. Therefore, I further find that the tenants' hearing package was not served on the landlord pursuant to the above statutory provisions. Specifically, the hearing package was sent to the landlord at a local address, which is the landlord's Vancouver regional office address, rather than to "the address for service" as shown on the tenancy agreement, which is the landlord's head office address. Accordingly, the tenants' application is hereby dismissed. The tenants have the option to reapply for dispute resolution.

Conclusion

Pursuant to all of the above, the tenants' application is hereby dismissed with leave to reapply.

DATE: June 8, 2010

Dispute Resolution Officer