

## **Decision**

**Dispute Codes:** MNR, MND, FF

### **Introduction**

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent, compensation for damage to the unit, and recovery of the filing fee. The landlord's agent and the witness for the landlord's agent participated in the hearing and gave affirmed testimony. The tenant did not appear.

A hearing in this dispute was initially convened on June 22, 2010. By decision of the same date, the dispute resolution officer found that the landlord's application for dispute resolution and notice of hearing (the "hearing package") had been "sufficiently served by mailing, by registered mail on March 8, 2010." While the tenant did not attend that hearing, information provided on the Canada Post tracking website confirmed that the hearing package was successfully delivered. Further, in the decision it was noted as follows:

The landlord testified her claim is significantly more than what appears on the Application for Dispute Resolution. As a result she stated that she wished to withdraw the claim and re-apply.

The hearing package concerning the present hearing was sent to the tenant at the same mailing address above on June 23, 2010 by way of registered mail; however, while delivery was attempted and a notice card was left "indicating where the item can be picked up," the registered mail was unclaimed and was returned to the landlord.

Subsequently, the identical hearing package was sent by registered mail on September 26, 2010 to an additional address thought to be where the tenant may be reached; however, she was not located at that address and the package was returned to the landlord.

### **Issues to be decided**

- Whether the hearing package has been properly served, and whether the landlord is entitled to any of the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, the month-to-month tenancy began on July 1, 2008. The tenant's portion of monthly rent was \$426.00.

On July 18, 2008 there was a fire in the unit. A related "incident report" completed by the local fire rescue department documents that the fire arose from the use of matches by one of the tenant's children. In the result, the tenant was required to immediately vacate the unit, could not return to live in the unit before restoration work had been completed, and the tenancy effectively ended. Thereafter, it is understood that emergency temporary accommodation was provided to the tenant.

Subsequently, on July 23, 2008 an agent of the landlord was in telephone contact with the tenant. It was during that conversation that the parties reached an understanding that the tenant would not return to live in the unit.

Particulars of the landlord's application for compensation are as follows:

\$20.68: balance of outstanding rent for July 2008

\$2,300.00: cleaning and deodorizing of unit

\$2,260.00: painting 2 coats and repair damaged drywall

\$8.45: disposal of garbage

\$30.00: man and truck to remove garbage

\$50.00: filing fee

Total: \$4,669.13

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 89 of the Act speaks to service of documents and, in particular, to **Special rules for certain documents**. This section of the Act reads, 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;
- (e) as ordered by the director under section 71(1) [*director's orders: delivery and service of documents*].

Following from all of the above, I am satisfied that the landlord's hearing package has been sufficiently served for the purposes of the Act. Section 90 of the Act, which speaks to **When documents are considered to have been received**, provides in part, that a document given or served in accordance with section 89 of the Act is deemed to be received [underline emphasis added] "if given or served by mail, on the 5<sup>th</sup> day after it is mailed." The tenant's failure to take delivery of the registered mail sent June 23, 2010 does not render the service null and void.

As for the monetary order, based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent and witness, I find after careful consideration that the landlord has established a claim of \$4,669.13, as set out above. Accordingly, I grant the landlord a monetary order under section 67 of the Act for the full amount.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$4,669.13**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 8, 2010

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Dispute Resolution Officer