

Decision

Dispute Codes: MNDC, OLC, FF

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, an order instructing the landlords to comply with the Act, regulation or tenancy agreement, and recovery of the filing fee. One of the tenants participated in the hearing and gave affirmed testimony.

The tenant testified that the application for dispute resolution and notice of hearing (the “hearing package”) were delivered to the landlords by way of a “communal mail box” on October 5, 2010. The tenant testified that in a subsequent oral conversation with one of the landlords, the landlord confirmed his receipt of the hearing package.

Issues to be decided

- Whether the tenants are entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the original six month term of tenancy was from November 1, 2009 to April 30, 2010. Thereafter, tenancy continued on a month-to-month basis until October 31, 2010, when the tenants vacated the unit and moved to a new residence. Rent in the amount of \$1,750.00 was payable in advance on the first day of each month. The tenant testified that rent included cable and internet. A security deposit of \$875.00 was collected at the outset of tenancy.

Despite the inclusion of cable and internet in the rent, the tenant testified that he paid the full amount due for each of the 9 months from January to September 2010 as follows:

\$114.95: total monthly charge for the combined amounts of \$62.95 for cable + \$52.00 for internet;

\$1,034.55: total cost for 9 months (\$114.95 x 9).

The tenants included no documentary evidence of invoices for the above utilities or receipts for payment.

Further, the tenant testified that the security deposit has not yet been returned by the landlords, even while the present application does not include application for recovery of same.

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/

Section 89 of the Act speaks to service of documents and, in particular, to the **Special rules for certain documents**, 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]*.

Based on the affirmed testimony of the tenant, I find that the tenants' method of serving the hearing package does not satisfy any of the above statutory provisions addressing service.

Further to the fact that the tenants' application includes no documentary evidence in support of either the terms of tenancy, or costs claimed for cable and internet, I hereby dismiss the tenants' application on the basis of insufficient service of the hearing package.

Conclusion

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

DATE: November 3, 2010

Dispute Resolution Officer