

## **Decision**

**Dispute Codes:** MNSD, FF

### **Introduction**

This hearing dealt with the tenant's application for return of the security and pet damage deposits combined, in addition to recovery of the filing fee. The tenant attended the hearing and gave affirmed testimony.

The tenant served the landlord with the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website confirms that the package was successfully delivered. The address used for service is an address the tenant found by way of a corporate search. However, the landlord's address for service as shown on the tenancy agreement is not the same as the address used for service, and a copy of the result of the corporate search is not in evidence.

### **Issues to be decided**

- Whether service of the hearing package complies with the statutory requirements
- Whether the tenant is entitled to the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, the month-to-month tenancy began on November 1, 2008. Monthly rent of \$600.00 and was due and payable on the first day of each month. A security deposit of \$250.00 and a pet damage deposit of \$300.00 were collected near the outset of tenancy.

By way of e-mail dated February 28, 2010, the tenant gave notice of her intent to end the tenancy effective March 31, 2010. Subsequently, the tenant vacated the unit on or about March 31, 2010.

Thereafter, by way of e-mail dated April 6, 2010, the tenant informed the landlord of her forwarding address and requested the return of the security and pet damage deposits combined. By way of an additional e-mail dated May 4, 2010, the tenant again informed the landlord of her forwarding address for the purposes of repaying her security and pet damage deposits. However, to date, these deposits have not been repaid.

### **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, **Special rules for certain documents**, and 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*].

Section 71 of the Act addresses **Director's orders: delivery and service of documents**, and provides in part:

71(1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;

Finally, section 38 of the Act speaks to **Return of security deposit and pet damage deposit** and provides in part:

38(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that service of the hearing package on the landlord does not comply with the above statutory requirements regarding service. The tenant has the option of filing an application for substituted service. In the meantime, the tenant's application is dismissed with leave to reapply.

## **Conclusion**

Following from all of the above, the tenant's application is dismissed with leave to reapply.

DATE: December 22, 2010

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Dispute Resolution Officer