



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord attended the hearing but the Tenant did not attend the hearing.

Issue(s) to be Decided

The preliminary issue to be determined is whether the Tenant has been properly served with notice of this dispute resolution proceeding.

Background and Evidence

The Landlord stated that the Tenant left without providing a forwarding address.

The Landlord stated that his partner, who was not at the hearing, told him that the Tenant had told the partner that he was moving back to his old residence in Kelowna, B.C.

The Landlord stated that the Tenant had provided his previous address on documents provided to the Landlord prior to the start of this tenancy. The Landlord concluded that this is the address the Tenant moved back to and he cites it as the service address for the Tenant on the Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application for Dispute Resolution, on June 21, 2012. The Landlord submitted a copy of the envelope that was sent by registered mail, which was returned to him by Canada Post, with a stamp that indicates that it was refused by addressee.

The Landlord stated that he made no attempts to confirm that the Tenant is living at the service address.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a tenant is to notify the tenant that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
- or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served in accordance with section 89(1)(a) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant is residing at the service address listed for the Tenant and I cannot, therefore, conclude that the Tenant was served in accordance with section 89(1)(b) of the *Act*. In determining that the Landlord has submitted insufficient evidence to establish that the Tenant is residing at the service address listed for the Tenant, I was influenced by:

- The absence of evidence, written or oral, from the person who the Tenant allegedly told he was moving back to his former address. Without the opportunity to clarify the veracity and accuracy of these comments of this alleged conversation, I find I cannot rely on it. I specifically note that the information is not sufficient to conclude that the Tenant stated that he was returning to his most recent former residence
- Although I have no reason to discount the Landlord's testimony that his partner told him the Tenant was moving back to his former address, I find that this testimony is subject to the frailties of hearsay evidence and cannot be relied upon to conclude that the Tenant did return to his most recent former residence
- The absence of any evidence that shows the Tenant did return to his former residence, such as a declaration from his current landlord.

As the Landlord declared that the Tenant did not provide him with a forwarding address, I cannot find that he was served in accordance with section 89(1)(c) of the *Act*.

The Landlord submitted no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

Conclusion

As the Landlord has failed to establish that the Tenant was provided with proper notice of this hearing, I dismiss the Landlord's Application for Dispute Resolution, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution in regards to these claims.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 23, 2012.

Residential Tenancy Branch