



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND

Introduction

This hearing dealt with the landlord's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for damage to the rental unit. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to speak to one another about this application.

Preliminary Issue – Service of Documents

The landlord testified that he sent the tenants a copy of his dispute resolution hearing package by registered mail on July 13, 2012. He said that he sent this hearing package to them at the address of one of their fathers because they did not provide him with their forwarding address at the end of this tenancy. He also testified that he sent the tenants a copy of his written evidence package by registered mail on September 18, 2012, three days before his hearing.

The tenants both attended this hearing and testified that they only document they had received from the landlord was the notice of this hearing. The female tenant testified that they had not received the landlord's written evidence, nor had they received a copy of the landlord's application for dispute resolution. She did not know the amount of the monetary award requested by the landlord (i.e., \$4,949.89) or the itemized account of the items included in the Details of the Dispute section of the landlord's application for dispute resolution.

Preliminary Issue to Decide

Has the landlord served his dispute resolution hearing package in accordance with the *Act*?

Analysis - Service of Documents

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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 document]...*

As the tenants did attend the hearing and testified that they both received the landlord's notice of this hearing, I was prepared to consider that the tenants had agreed that they had been served well in advance of this hearing. After the hearing commenced, the tenants testified that they had only received the notice of this hearing and no copy of the landlord's application for dispute resolution. The landlord gave sworn testimony that he enclosed a copy of his application for dispute resolution with the notice for this hearing in the registered mail package he sent on July 13, 2012. In light of the disputed testimony regarding the landlord's service of a copy of his application for dispute resolution to the tenants, I was not prepared to proceed with this hearing. I was not satisfied that the tenants could be given a fair hearing of this matter. Without a copy of the landlord's application for dispute resolution, the tenants would not have had the opportunity to know the case against them. This is a key component of the principle of natural justice which entitles a respondent to properly prepare for a dispute resolution hearing.

As noted above, a further service problem resulted from the landlord's very late registered mailing of his written evidence package to the tenants, three days before this hearing. As the tenants testified that they had not received this evidence package, I refer to section 90 of the *Act* which establishes that mailed evidence is deemed served on the 5th day after its mailing. In this event, the landlord's written evidence, expected to be served to both tenants a week before this hearing, was not deemed to have been served until September 24, 2012, three days after this hearing.

Under these circumstances, I find that the landlord has not served the tenants with the dispute resolution hearing package (including a copy of the landlord's application for dispute resolution) in a manner required by section 89(1) of the *Act*. Sending a notice of dispute resolution to a tenant's parent does not comply with the requirements of section 89(1) of the *Act*. At the hearing, I dismissed the landlord's application with leave to reapply.

In response to the landlord's concern that he still did not have the tenants' accurate mailing address, I asked the tenants to provide their current mailing address. I did so in order to ensure that the tenants are given a proper opportunity to receive and prepare for any subsequent application for dispute resolution that the landlord might launch. The female tenant testified that the following address is the correct current mailing address for both tenants:

1316 Sherbrooke Ave.
Kamloops B.C.
V2B 1W9

To avoid any future problems with service of documents relating to this tenancy, I order that the above address is the correct current mailing address for both of the tenants/respondents for the purposes of any correspondence relating to this tenancy. I make this order and provide this direction pursuant to sections 71(1) and 89(1)(e) of the *Act*. If the landlord wishes to reapply for dispute resolution and serve the tenants by registered mail, he is to do so by sending separate copies of his complete dispute resolution hearing packages to both tenants at the above address. In the event that the landlord submits a new application for dispute resolution regarding this tenancy, I would strongly recommend that he obtain and submit into written evidence a statement from a witness who watches him enclose and seal the envelope attesting to the complete contents of any material that he includes in his dispute resolution hearing package to the tenants.

Conclusion

I dismiss the landlord's application with leave to reapply.

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: September 21, 2012

Residential Tenancy Branch