



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of their deposits pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

Issues(s) to be Decided

Have either of the parties served one another with their applications for dispute resolution in accordance with the *Act*? Have the tenants provided their forwarding address in writing to the landlords?

Background and Evidence - Service of Applications

The tenants entered oral and written evidence that they served both landlords with their dispute resolution hearing package including a copy of their application for dispute resolution and their mailing address by registered mail on September 14, 2012. The landlords entered oral and written evidence that the registered mail they received from the tenants included only the tenants' Notice of a Dispute Resolution Hearing. They gave sworn testimony that the tenants had not provided them with a copy of the tenants' application for dispute resolution. The female landlord (the landlord) and her agent also

gave sworn testimony and written evidence that they had not been provided with the tenants' forwarding address in writing.

The landlords entered written evidence that the landlords' agent attended the office of the Residential Tenancy Branch to seek a substituted service order. They did so as the only address they claimed to have for the tenants for the service of the landlords' application for dispute resolution was the tenants' business address they obtained through checking the tenants' business website on the internet. The landlords entered written evidence that they sent both tenants copies of the landlords' dispute resolution hearing package to the tenants' business address. They also sent their written evidence package to the same address. The landlords provided the Canada Post Tracking Numbers, Customer Receipts and a Canada Post On-Line Tracking Record to confirm these registered mailings. They noted that the tenants had not picked up the dispute resolution hearing package, but had signed for the landlords' written evidence package. The female tenant testified that the tenants had received the landlords' written evidence package, although she said that this information was sent by regular mail.

Both parties maintained that they had not received a copy of the other parties' application for dispute resolution. The tenants were unaware that the landlords had filed their own application for dispute resolution. The landlords knew that there was a hearing scheduled to consider the tenants' application for dispute resolution, but claimed that they had not been advised of the nature of the tenants' application.

Analysis – Service of Applications

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]...*

I find that there is no question that the landlords have not served the tenants with their dispute resolution hearing package in a manner required by section 89(1) of the *Act*. By sending their package to a business address identified by way of an internet search, the landlords have not complied with the requirements of either section 89(1)(c) of the *Act*, as the tenants do not reside there, or section 89(1)(d) of the *Act*, as they testified that they did not receive this forwarding address from the tenants.

There is conflicting evidence with respect to whether the tenants did in fact include a copy of their application for dispute resolution with the dispute resolution hearing package they sent the landlords. Given that the landlords have submitted a request for a monetary award in excess of the tenants' application, there would seem little benefit to the landlords to misrepresent whether the tenants had included their application for dispute resolution in the package sent to them to notify the landlords of the tenants' application for dispute resolution.

A fundamental principle of natural justice requires a respondent to know the case against them and to be given a proper opportunity to prepare for and respond to the applicant's case. In this case, I find that the principles of natural justice require me to ensure that both parties had a proper opportunity to know the case against them. For that reason and out of an abundance of caution to ensure procedural fairness for all concerned, I accept the landlords' claim that they were not served with a copy of the

tenants' application for dispute resolution, which would be necessary in order for them to properly prepare for this hearing.

For the above reasons, I find that neither party has served one another with their dispute resolution hearing packages including a copy of their application for dispute resolution. Under these circumstances, I dismiss both applications for dispute resolution with leave to reapply.

In order to avoid further problems with respect to the service of documents in future applications that the parties may wish to initiate, I asked the tenants to confirm their forwarding addresses for the purposes of the *Act*. The tenants confirmed that their correct mailing address where they can be served documents is as follows:

123 - 4567 X Street
Somewhere BC V3V 6T8

In accordance with the powers delegated to me under the *Act*, I order that the above address is the address where the landlords can serve documents to the tenants for the purposes of the *Act*.

At the hearing, I heard evidence regarding the tenants' provision of their forwarding address to the landlords. The female tenant testified that the tenants did not give the landlords their forwarding address in writing at the end of this tenancy. Although the male tenant said that an August 31, 2012 email sent to the landlord(s) provided their forwarding address to the landlords, two problems are presented by this testimony. First, email is not considered provision of a tenant's forwarding address in writing for the purposes of the *Act*. Second, the male tenant agreed with my observation that the tenants did not include their forwarding address in writing in the August 31, 2012 email. In the interests of advancing the process for clarifying responsibilities regarding the landlords' retention of the tenants' deposits, I find that the tenants have not yet provided their forwarding address in writing to the landlords. If the tenants are interested in

obtaining a return of their deposits, I direct them to provide the landlords with a written request to return their deposits to the forwarding address of their choosing, presumably that identified by the tenants at this hearing. The landlords would then have 15 days after their deemed receipt of the tenants' forwarding address in writing to either return the tenants' deposits in full or apply for dispute resolution to retain all or a portion of their deposits.

Conclusion

I dismiss both applications for dispute resolution with leave to reapply.

I find that the tenants have not yet provided the landlords with their forwarding address in writing for the purposes of obtaining a return of their deposits.

I order that the tenants' mailing address for the purpose of the *Act* is as set out above.

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: November 29, 2012

Residential Tenancy Branch

