



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The landlord attended and gave affirmed testimony. Neither tenant appeared.

Issue(s) to be Decided

Whether the tenants have been served with the landlord's application for dispute resolution and notice of hearing (the "hearing package") in accordance with the Act;

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

A previous hearing was held in regard to this tenancy. By decision dated August 8, 2012 (corrected August 17, 2012) a monetary order was issued in favour of the landlord for unpaid rent and utilities, loss of rental income, and the filing fee. Further, pursuant to the decision the landlord was authorized to retain the security deposit as an offset to the aforementioned entitlements. As the tenants had vacated the unit by July 31, 2012, the application for an order of possession was dismissed.

The tenants did not inform the landlord of a forwarding address. Accordingly, the landlord sent a hearing package to each tenant by way of express post to the rental unit address. The landlord testified that Canada Post officials informed her that the tenants had Canada Post redirect their mail until February 2013. Evidence submitted by the landlord includes the Canada Post tracking numbers for the express post.

The Canada Post website informs, variously, that the items were "accepted at Post Office" on January 10, 2013; that there was "Attempted Delivery. Notice card left

indicating where item can be picked up,” on January 11, 2013; that items were “unclaimed by recipient. Item being returned to sender” on February 6, 2013; and later that same day (February 6, 2013) the items are shown as having been “redirected to recipient’s new address.” The next day, February 7, 2013, the Canada Post website informs that “Return to sender attempted. Card left indicating where item can be picked up.” Finally, the items were “successfully returned to the sender” on February 14, 2013.

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

I find there is insufficient documentary evidence that that the tenants instructed Canada Post to have mail which was sent to them at the rental unit address, redirected to their new address or, if they did, in regard to what specific time frame this redirection applied.

I further find that there is no conclusive evidence of the immediate outcome of Canada Post’s undertaking to redirect the hearing packages to the tenants’ new address on February 6, 2013. Specifically, there is no evidence that a card was left at the new address, indicating where the item(s) could be picked up. Neither is there any evidence that the tenants still resided at the “new address” on February 6, 2013. Again, I note that on February 7, 2013, the day immediately following Canada Post’s efforts to redirect the items to the tenants’ new address, the Canada Post website informs of “Return to sender attempted,” and “Card left indicating where item can be picked up.”

Section 89 of the Act speaks to **Special rules for certain documents**, in part:

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*].

In summary, I find that the landlord's hearing packages have not presently been served in a manner that complies with the service provisions set out above.

Following from the above, the landlord has the option of filing an application for substituted service. In this regard, section 71 of the Act addresses **Director's orders: delivery and service of documents**, in part as follows:

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*];

Conclusion

The landlord's application is hereby dismissed 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: April 2, 2013

Residential Tenancy Branch

