



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNDC, RPP, OPT, AAT, MND, MNR, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an Order of Possession of the rental unit pursuant to section 54; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant 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 discuss their applications with one another. At the commencement of the hearing, I clarified that the spelling of the landlord's name was as set out above rather than the version identified in the tenant's application for dispute resolution. With the agreement of both parties, I revised the landlord's name in the tenant's application to that which appears above.

Preliminary Matters – Service of Documents and Landlord's Agent's Request for an Adjournment

The tenant testified that on April 6, 2013, he sent the landlord a copy of his dispute resolution hearing package by registered mail. Although the landlord's name was

misspelled on the registered mail, the landlord confirmed that she did receive the tenant's package. The landlord's agent (the agent) and the landlord testified that the landlord sent her dispute resolution hearing package to the tenant by registered mail on April 26, 2013. The tenant and his advocate said that they had not received the landlord's hearing package and were unaware that the landlord had submitted a cross-application that was scheduled for consideration at this hearing.

At the commencement of the hearing, the landlord's agent (the agent) made an oral request for an adjournment of these applications as the landlord's attempt to serve the tenant with her dispute resolution hearing package had proven unsuccessful. He and the landlord gave sworn testimony that the landlord's dispute resolution hearing had been returned by Canada Post on April 29, 2013. They testified that the package was returned because Canada Post advised them that the mailing address provided to them by the tenant did not exist.

The tenant and his advocate said that the tenant's application for dispute resolution identified the dispute address as his mailing address because he was hoping to return to that address if his application for dispute resolution had proven successful. The tenant testified that he was coming back to the rental unit to check for his mail frequently. The landlord's agent said that the landlord sent her dispute resolution hearing package to another address for the tenant provided by the tenant's agent in the tenant's written evidence package. The tenant's advocate said that he had misread the tenant's address when he included that information in the tenant's written evidence package. The tenant's advocate said that he had erred in providing this incorrect mailing address to the landlord.

Issues(s) to be Decided

Should the landlord's oral request for an adjournment be granted?

Analysis

Rule 6 of the Residential Tenancy Branch Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure. Since the tenant or his advocate provided two incorrect mailing addresses, I find that the landlord is not responsible for either her failure to serve the tenant with a copy of the landlord's dispute resolution hearing package for her application or for failing to send written evidence to the tenant in response to his application.

Under these circumstances, I advised the parties that I did not believe that the landlord had been given a proper opportunity to present written evidence to meet the case against her or to present her own application for dispute resolution. Although I could also have ruled in accordance with section 90 of the *Act* that the landlord's application was deemed served on the fifth day after its registered mailing and proceeded to consider both applications, I found that to do so and proceed with a hearing of the landlord's application would be to also deny the tenant an opportunity to respond to the landlord's application. I informed the parties at the hearing of my decision to adjourn my consideration of both applications to a time to be determined later.

Conclusion

I find it appropriate to grant an adjournment, and I order that a time be set aside for a reconvened hearing to take place. **Notices of Reconvened Hearing are enclosed with this decision for both applicants to serve to one another, with all other required documents, upon one another within three (3) days of receiving this decision in accordance with section 88 of the *Act*.** The landlord is ordered to serve the tenant with the notice of hearing for her application to the address provided by the tenant and his advocate at this hearing, in addition to any additional evidence on which the landlord intends to rely. For his part, the tenant is also required to serve the notice of hearing for his application to the landlord, along with any additional documentary evidence on which he intends to rely. Both parties are also ordered to provide the RTB with copies of all additional documentary evidence they provide to one another.

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: May 06, 2013

Residential Tenancy Branch

