



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNDC, OLC, F, O, MNR

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- other unspecified remedies.

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 comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

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.

The landlord and her legal counsel confirmed that the landlord received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 30, 2013. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*. At the hearing, the tenant's counsel confirmed that the monetary award sought by the tenant was \$949.00, as set out on Schedule A, attached to her application for dispute resolution.

The landlord and her legal counsel entered into written evidence a copy of a Canada Post Tracking Number to confirm the landlord's registered mailing of her dispute resolution hearing package to the tenant on November 2, 2013. The landlord sent this

to the address identified on the tenant's application for dispute resolution. The tenant's counsel said that he was unaware of a cross-application from the landlord for her claim for a monetary award. However, he confirmed that the address identified on the tenant's application is that of his law office. The landlord's counsel said the landlord's hearing package was returned to her by Canada Post as "not received" on November 7. The tenant's counsel said that he had checked with his administrative assistant and she had no recollection of any registered mail being submitted for the tenant from the landlord. The landlord said that she sent an email to the landlord's counsel on November 7, 2013, to advise him of her application and to seek additional information regarding how to serve the tenant with the landlord's application for dispute resolution.

As the tenant's counsel had not received the landlord's dispute resolution hearing package, he requested an adjournment to enable him to know the details of the landlord's application for dispute resolution.

Analysis- Request for an Adjournment

Rule 6 of the RTB's Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. As the tenant and her counsel made no written request for an adjournment prior to this hearing, Rule 6.3 applies:

6.3 Adjournment after the dispute resolution proceeding commences

At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure. The following sections of Rule 6.4 are of particular importance in my consideration of the request by the tenant's counsel for an adjournment in this situation:

- a) the oral or written submissions of the parties;*
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];*
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; ...*
- e) the possible prejudice to each party...*

At the hearing, the landlord's counsel objected to the request for an adjournment, correctly observing that the tenant had been properly served with notice of the

landlord's application for dispute resolution in accordance with the *Act*. In accordance with sections 89 and 90 of the *Act*, the tenant would be deemed served with notice of the landlord's application for dispute resolution on the fifth day after its registered mailing to the address cited on the tenant's application for dispute resolution, November 7, 2013. The landlord's counsel also maintained that the tenant's counsel had avoided responding to the landlord's email notifying him that the landlord had launched her own application for a monetary award against the tenant.

Deemed service of the landlord's application to the tenant occurred on November 7, 2013, less than five business days before this hearing. In addition, the tenant's landlord's delay in serving her application to the tenant made it difficult for the landlord tenant to provide written evidence in response to the landlord's application within the five-day time period for doing so.

Although I gave the objections of the landlord's counsel careful consideration, I advised the parties at the hearing of my decision to adjourn my consideration of the landlord's application for dispute resolution. In doing so, I note that the timing of the landlord's service of her dispute resolution hearing package to the tenant, even if it had been successful, still would have left the tenant with little time to prepare for and provide written evidence for this hearing. As this tenancy ended on March 5, 2013, I find that neither party would be unduly prejudiced by the request from the tenant's counsel for an adjournment of the hearing of the landlord's application. I have also taken into account the provisions of Rule 6.4(b) and (c) as outlined above and believe that the request by the tenant's counsel for an adjournment will ensure a fair hearing of this dispute and is in accordance with the objective and purpose of the hearing process.

At the hearing, I asked the landlord's counsel if he would prefer to deal with the tenant's application separate from the landlord's application. The landlord's counsel expressed a preference to deal with both matters together at an adjourned hearing. The tenant's counsel agreed that the two hearings should be considered together.

Under these circumstances and for the reasons outlined above, I allowed the request from the tenant's counsel for an adjournment of both applications to enable the tenant to obtain a copy of the landlord's application for dispute resolution. Both counsels agreed to add their own names to the mailing addresses where the parties can be served with documents from one another.

The landlord's counsel requested that the adjournment date be delayed until mid-February 2014, as the landlord has planned to be out of the country until early February.

Conclusion

This hearing is adjourned to a teleconference hearing at February 17, 2014 at 9:30 a.m., as set out in the attached notices. **Notices of hearing are attached and included with this interim decision.**

Failure to attend the hearing at the scheduled time, will result in a decision being made on the basis of the information submitted prior to the reconvened hearing and the testimony of the party in attendance at the reconvened hearing.

I order the landlord to serve a copy of her dispute resolution hearing package, including a copy of the landlord's application for dispute resolution, and written evidence to the tenant at the address of the tenant's counsel as discussed at this hearing as soon as possible. Any evidence in response to the landlord's application should be submitted to the RTB and the counsel for the landlord as soon as possible after the tenant's receipt of the landlord's hearing and evidence packages, and at least 5 business days in advance of the reconvened hearing date. In addition, Fact Sheets developed by the RTB with respect to the service of evidence are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the RTB at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This Interim 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 14, 2013