



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DENWOOD HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD; MNDC; FF

Introduction

This is a re-hearing of an application by the tenant's application originally heard on October 25, 2013. The respondent landlord was in attendance at the hearing today, but the applicant tenant did not appear.

At the original hearing, the portion of the tenant's application for compensation for damages was severed and dismissed with leave to reapply separately. However the portion of the application, in which the tenant was seeking a refund of double the security deposit, was heard and determined on October 25, 2013.

The original hearing was held in the absence of the landlord who did not attend. The original decision found in favour of the tenant and the tenant was successful in being granted a monetary order for a refund of double the security deposit, plus the cost of the application and a monetary order of \$1,050.00 was issued against the landlord.

On November 15, 2013, the landlord made a successful application seeking Review Consideration of the October 25, 2013 decision and order. In the Review Consideration Decision issued on November 27, 2013, the arbitrator granted the landlord a re-hearing of the tenant's application, as excerpted below:

"Given the landlord's submission that he inadvertently failed to receive the registered mail I find that the decision and order issued on October 25, 2013 is suspended and that a review hearing must be held so that the landlord may be provided with an opportunity to be heard.

The review hearing will consider only the claim made in relation to the security deposit.

Notices of the time and date of the hearing are included with this review consideration decision for the landlord to serve to the tenant within 3 days of receipt of this decision. The landlord must also serve a copy of this decision to the tenant."

Along with the Review Consideration Decision, above, the landlord was provided with copies of Notices of Re-hearing to be served on the tenant by the landlord. The Notices were dated December 5, 2013 and notified the parties the time and date that the matter would be re-heard. The re-hearing was scheduled for 1:00 p.m. on January 27, 2014.

According to the Review Consideration Decision, the landlord was ordered to serve the Notice of Rehearing “***within 3 days***” of receiving the Review Consideration Decision.

Preliminary Matters

I note that section 90 of the Act provides direction for when a mailed document is deemed to have been served: “(a) if given or served by mail, on the 5th day after it is mail”

I find that, based on the December 5, 2013 date shown on the Notice of Hearing documents, the landlord received the November 27, 2013 Review Consideration Decision on December 10, 2013.

I find that, in order to comply with the arbitrator’s order, the landlord was required to serve the hearing package and Notice of Re-Hearing on or before December 10, 2013.

However, records submitted by the landlord into evidence, including a Canada Post registered mail tracking number, confirm the landlord failed to serve the re-hearing documents within the required 3 days as ordered. The records indicate that the landlord mailed the Re-Hearing package 10 days after the decision was received.

For this reason, I find that I must decline to hear the matter on the basis that the tenant was not adequately served with the Review Consideration Decision and the Notice of Rehearing as ordered. I hereby reinstate the original hearing decision and monetary order issued in favour of the tenant on October 25, 2013.

Conclusion

The re-hearing could not proceed due to the landlord’s failure to properly serve the tenant as ordered in the Review Consideration Decision of November 27, 2013. The original Decision and order dated October 25, 2013 is re-instated and in full effect.

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: January 27, 2014

Residential Tenancy Branch