



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI Goddard & Smith Realty Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their 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 call witnesses. The male Respondent testified that he was representing the interests of the female Respondent, who he maintained has a hearing problem which makes it difficult for her to participate in teleconference hearings of this nature. The male Respondent confirmed that the landlord who attended this hearing (the landlord) handed the female Respondent a copy of the landlords' dispute resolution hearing package and written evidence package on November 4, 2013. I am satisfied that the female Respondent has been served with notice of the landlords' application naming her as a Respondent in this application in accordance with the provisions of section 89(1) of the *Act*.

The male Respondent testified that the only Notice of a Dispute Resolution Hearing he had received was the Notice identifying the female Respondent as the Respondent to this matter. The landlord testified that he handed the female Respondent copies of two separate Notices of a Dispute Resolution Hearing identifying the male and female Respondents as Respondents separately. He testified that he could not locate the male Respondent and that the female Respondent promised to hand the male Respondent his Notice of Hearing in which he was also named as a Respondent.

Preliminary Issues and Background

The landlord entered into written evidence a copy of my October 1, 2013 decision regarding a previous application submitted on his behalf by the management company looking after his interests. That application was for an Order of Possession and a

monetary award against both tenants that was heard on September 30, 2013. The male Respondent noted that the landlord had incorrectly identified the female Respondent in the previous application as he spelled the female Respondent's first name with an "e" and not an "o" in that application.

The male Respondent maintained that he has an outstanding application before a Small Claims Court Judge with respect to the previous October 1, 2013 decision. Although the male Respondent considered the October 1, 2013 decision to have been issued under circumstances that called its legality into question, I noted that I could not revise or alter that decision as it has become a final and binding decision.

The male Respondent also gave undisputed sworn testimony that he has his own application for dispute resolution scheduled for a hearing on February 20, 2014.

The male Respondent also maintained that the landlords were in some way precluded from proceeding with their current application because of the October 1, 2013 decision. On this point, I checked with the landlord to ensure that none of the outcomes sought in the current application duplicated matters that were before me on September 30, 2013. After reviewing the wording of my previous decision of October 1, 2013 and comparing this with the items listed in the landlords' Monetary Order Worksheet seeking an additional monetary award of \$4,683.77 plus the recovery of the landlords' \$50.00 filing fee, I advised the parties that I do not find the landlords are prevented from seeking this additional monetary award.

Issues(s) to be Decided

Is the female Respondent correctly named as a Respondent in the landlord's application for dispute resolution? Has the male Respondent been served with notice that he is a Respondent in this hearing in accordance with the *Act*?

Preliminary Issues –Service of Documents

The male Respondent asked for a decision regarding two preliminary issues regarding the service of documents.

First, the male Respondent maintained that the female Respondent did not sign the Residential Tenancy Agreement (the Agreement) that was in place for the latter stages of this tenancy. Although the Agreement signed on April 4, 2013 to cover the tenancy period from June 1, 2013 until May 31, 2014 included the female Respondent's name, the female Respondent does not appear to have signed that Agreement. At this hearing, the landlords only entered into written evidence a copy of the Agreement signed by the male Respondent to cover the fixed term tenancy commencing on June 1,

2013. Since there was no evidence that the female Respondent was a signatory to the Agreement, the male Respondent asked that she not be included in any application for a monetary award initiated by the landlord and that only the male Respondent could be held responsible for any tenant liability established by that Agreement.

After reviewing the Agreement, I advised the parties that there is no evidence before me that the female Respondent signed the Agreement allowing the landlords to include her in their current application for a monetary award. The landlord testified that the other landlord, a management company he hired for this rental property had dealt with the signing of the new Agreement and he was uncertain as to whether the female Respondent had signed the Agreement. Under these circumstances, I dismiss the landlords' application to obtain a monetary award against the female Respondent without leave to reapply as I am not satisfied that the landlord has demonstrated that she signed that Agreement. I find that the only Respondent responsible for any further monetary awards claimed by the landlords is the male Respondent.

Second, the male Respondent maintained that he was unaware until this hearing that the landlords had included him in their application for a monetary award. He testified that he was not handed any separate Notice of a Dispute Resolution Hearing by the female Respondent. He said that his intention at this hearing was to represent only the female Respondent's interests in this matter.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

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;...*

At the hearing, the landlord gave sworn testimony that the only method he used for serving the male Respondent with the Notice of Dispute Resolution Hearing naming him as an additional Respondent was by requesting that the female Respondent hand the male Respondent that Notice. He maintained that it was only reasonable that the male

Respondent was aware that he had also been named as a Respondent in the landlords' application, as that had been the case with his previous application. However, he agreed that he had not served the male Respondent with the Notice of Hearing for the landlords' current application in any of the ways outlined in section 89(1) of the *Act*.

As the landlords' application for a monetary Order has not been served to the male Respondent in a method required under section 89(1) of the *Act*, I dismiss the landlords' application for a monetary Order against the male Respondent with leave to reapply.

Conclusion

I dismiss the landlords' application for a monetary Order against the female Respondent without leave to reapply.

I dismiss the landlords' application for a monetary Order against the male Respondent with leave to reapply.

As the landlords have been unsuccessful in their application, they bear the responsibility for their filing fee.

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: February 17, 2014

Residential Tenancy Branch

