



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This was an application by the tenant seeking an order for the return of the tenant's security deposit that the landlord had failed to refund. A hearing was originally held on the tenant's application on May 5, 2014. The landlord had failed to attend and the hearing was held in the absence of the landlord.

The outcome of the original hearing was that the tenant's request for the return of the security deposit was found to be premature and no Monetary Order was granted to the tenant because the arbitrator determined that the tenant had not yet provided the landlord with a written forwarding address.

The arbitrator also ordered that:

"The landlord therefore has 15 days to return the tenant's security deposit. If the landlord fails to do so, the tenant is entitled to file a new application to recover double the security deposit pursuant to s. 38 of the Act".

On May 20, 2014, the landlord had made an application for Review Consideration of the above decision, based on the landlord being unable to attend the May 5, 2014 hearing..

The landlord was successful and the Review Consideration decision dated May 26, 2014, granted the landlord's request for a re-hearing of the tenant's application, which was scheduled for today, July 16, 2014. The May 20, 2014 Review Consideration Decision also contained the following instructions for the landlord to follow:

"Therefore, I find that the decision issued on May 5, 2014 is suspended until such time as the review hearing is held and the decision is confirmed or varied.

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

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets 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 Residential Tenancy Branch...

The landlord appeared at the scheduled review hearing today. However the applicant tenant was not in attendance to participate in the review hearing.

Preliminary Matter

The landlord was not able to provide any verification that he had completed the above instructions in the May 20, 2014 Review consideration decision that required the landlord to serve the tenant with the Review Decision and the Notice of the Review Hearing date.

No proof of service had been submitted into evidence by the landlord for the Review Hearing and, at the commencement of this hearing, the landlord was not able to provide the registered mail tracking numbers from Canada Post if any existed.

Section 59 states that an application for dispute resolution must be in the approved form, include full particulars of the dispute that are the subject of the dispute resolution proceedings. A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. (my emphasis)

Section 89 of the Act states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, must be given to one party by another, 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.

The burden is on the applicant to prove that the service of the hearing package to the respondent was in accordance with the Act.

Given the above, I find that the review hearing cannot proceed because the landlord is not able to prove that the tenant was properly served with the Notice of Review Hearing and other evidence.

Therefore, no review hearing will be held today. I hereby order that and the original decision issued on May 5, 2014, still stands and is restored intact.

Conclusion

Although on May 20, 2014, the respondent landlord had been granted a rehearing of the May 5th proceeding on review, the review hearing scheduled for July 16, 2014, could not proceed because the landlord failed to adequately prove that the applicant tenant had been served with the rehearing documents as the landlord was instructed to do. The original decision issued on May 5, 2014 is ordered restored and still stands.

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: July 05, 2014

Residential Tenancy Branch

