



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SELKIRK HOLDINGS LTD, INC. NO. 451140
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, O

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for the return of double the security deposit, and for ‘Other’ issues.

The Landlord failed to appear for the sixteen minute duration of the hearing and provided no written evidence prior to the hearing.

Both Tenants appeared for the hearing. However, the female Tenant was calling into the hearing from a busy location where there was a significant noise disturbance in the background. I explained to the female Tenant that these were legal proceedings that required participants to be present in a quiet area, free from disturbance so that evidence can be provided.

Both Tenants became frustrated and I explained to the female Tenant that I was not willing to continue the hearing with this noise disturbance in the background and asked whether she could go to another quiet location. The female Tenant became verbally abusive stating that she had taken time off work to dial into this hearing and that this was the second time she was making this Application. When I attempted to explain to the Tenant that she had been provided sufficient time to ensure that she could be in a place to take part in the hearing which is free from disturbance and that a telephone conference call hearing is less time consuming for a participant than requiring an appearance in person, the Tenant became more frustrated and exited the call.

I asked the male Tenant whether he was willing to continue as the agent on behalf of the female Tenant. The male Tenant used abusive language but started to make his submissions.

As the Landlord had failed to appear for the hearing, I turned my mind to the service of the Tenant's Application and the Notice of Hearing documents to the Landlords named on the Application.

The male Tenant explained that they had served the Landlords by registered mail on March 15, 2014. However, the male Tenant was unable to provide the Canada Post tracking number as evidence for this method of service and this did not appear in the Tenant's written evidence provided for this hearing. The male Tenant explained that this had been faxed in by the female Tenant but there was no record of this evidence being faxed to the Residential Tenancy Branch in accordance with the Rules of Procedure at the time of writing this decision.

However, I gave permission for the male Tenant to exit the call so that he could ascertain this information and provide it to me during the hearing. The male Tenant exited the call and dialed back in and provided me with the registered mail tracking number.

When this number was checked against the Canada Post website during the hearing, the website indicated that it was successfully delivered but there is no indication of who received and signed for it and to which address it was sent to; this information had also not been provided in advance of the hearing by the Tenants.

The male Tenant explained that they had initially sent the Landlord the hearing documents by registered mail to the Landlord's place of business, for which the Tenants had provided written evidence showing the address where the Landlord conducts business. The male Tenant explained that the hearing papers came back as unclaimed and as a result, they did some searching on the internet where they were able to ascertain an address; however, the male Tenant was unable to provide the address used for the service of the paperwork.

When I asked the male Tenant for the tracking number relating to the service of documents to the Landlord's place where business is conducted, the male Tenant became frustrated and angry and began to use obscene language stating that they had not been told to submit this evidence. As a result, he exited the conference call.

Analysis & Conclusion

When a party makes an Application, they are required to prove that the Respondent has been sufficiently served under the Act for the proceedings to move forward. In the

absence of the Respondent at a hearing, the Applicant needs to rely on other evidence to prove service.

Furthermore, Section 90 of the Act provides for deeming provisions based on certain methods of service. For example, a document served by registered mail is deemed to have been received five days after it is mailed and a party cannot avoid service by refusing or neglecting to pick up mail. However, parties relying on the deeming provisions of the Act need to then satisfy the arbitrator that the respondent has been served the Application to an address where the Respondents are likely to receive the documents, such as a registered business address.

In this case, the Tenants failed to provide any evidence relating to the address they had found on the internet as an address where the Landlord could have received the documents and a 'delivered' Canada Post tracking number is not sufficient in this case.

The Tenants had provided written evidence of the mailing address of the company named on the Application but were unable to provide any Canada Post tracking number related to the service of documents to this address that could have allowed for the use of the deeming provisions of the Act.

Conclusion

It is not in the interest of natural and fair justice for me to move forward with an Application that I am not satisfied has been served to the Respondent and therefore, I dismiss the Tenants' Application with leave to re-apply.

However, I would strongly caution the Tenants in the following respects. An Applicant appearing for a dispute resolution hearing is given adequate time to prepare for the hearing and the party needs to ensure that they are in a position to provide evidence for the scheduled date and time free from any disturbance to the proceedings. An Applicant may also choose to assign an agent, advocate or legal counsel to act on their behalf if they are unable to appear for the hearing due to a busy schedule.

In addition, as explained in the Fact Sheet 114, which was issued to the Tenants by the Residential Tenancy Branch with their hearing documents, a party is required to submit evidence that they intend to rely on **prior** to the hearing. The Residential Tenancy Branch cannot advise parties to a dispute resolution hearing on how to gather evidence and what to submit.

The Tenants are also cautioned that the use of obscene, inappropriate and abusive language is not acceptable in dispute resolution proceedings.

The Tenants are kindly requested to take the above points into account before considering another Application.

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: June 30, 2014

Residential Tenancy Branch

