



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and for an order to retain the tenants' security deposit. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenants did not attend

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to an order authorizing her to retain the tenants' security and pet deposits?

Background and Evidence

In the application for dispute resolution the landlord stated as follows:

Tenant moved in on 1 July, 2013 & moved out on 3 Feb, 2014, without giving proper notice. Keys, garage remote aren't returned. Alarm system is damaged & filed police case. Filming pornography in the premises is seriously jeopardized the interest of the landlord. Feb unpaid rent \$1790. Repair alarm system \$152.25. Claim for loss arising from tenant's breach of fixed agreement, originally should be ended on 30 June, 2014, 4250. Filing fees for claim \$50.

On April 23, 2014 the landlord sent the Application for Dispute Resolution and Notice of Hearing to the tenants by registered mail to the address of the rental unit despite the fact that according to the landlord's statement, the tenants moved out of the rental unit on February 3, 2014, more than two months before the application was sent. The landlord submitted at the hearing that the application was validly served on the tenants because she found a printed card in the mailbox at the rental unit said to be from Canada Post and titled as: "Confirmation of Mail Forwarding (Change of Address) or Hold Mail Service". The card had the typed name of one of the tenants, the address of the rental unit and a notation: "EXPIRES – 2014/06/04 - ...". The landlord said that the card constituted proof that the tenants had arranged to have their mail forwarded to a new address after the tenancy ended and mailing the documents to the rental unit was proper service upon the tenants.

Analysis

Section 89 (1) of the *Residential Tenancy Act* provides that:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The landlord has not sent documents by registered mail to the address at which the tenant resides and she did not send the documents to a forwarding address provided by the tenant; instead she mailed them to the address of the rental unit upon the assumption that they would be forwarded to an unknown address specified by the tenant.

Conclusion

The tenants have not attended upon this application and have not provided any form of acknowledgement that they received notice of this proceeding. I find that the landlord has failed to prove that she served the tenants with the application for dispute resolution in accordance with the provisions of the *Residential Tenancy Act*. *This application is therefore dismissed with leave to reapply.*

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: August 22, 2014

Residential Tenancy Branch

