



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Prestige Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF, O

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; to recover the fee for filing this Application for Dispute Resolution; and for "other".

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to retain the security deposit, and to recover the filing fee for the cost of this Application for Dispute Resolution?

Background and Evidence

The male Agent for the Landlord stated that the Tenant's sister was living in the rental unit for a portion of this tenancy, although the Landlord did not have a tenancy agreement with her.

The male Agent for the Landlord stated that on April 16, 2014 the Tenant's sister provided the Landlord with a forwarding address, via text message, after the Landlord informed her they wished to refund her security deposit.

The male Agent for the Landlord stated that on April 25, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the forwarding address provided by the Tenant's sister, via registered mail. He stated that the documents were sent to that address in an envelope that was addressed to the Tenant. He stated that

the documents were returned with a Canada Post stamp that reads “moved/unknown. The Landlord submitted a copy of the Canada Post receipt and the returned envelope which corroborates this testimony.

The male Agent for the Landlord stated that on August 12, 2014 the Application for Dispute Resolution and the Notice of Hearing were again sent to the forwarding address provided by the Tenant's sister, via registered mail. He stated that the documents were sent to that address in an envelope that was addressed to the Tenant. He stated that the documents have not yet been returned and that the Canada Post website shows they have not yet been picked up by the Tenant.

Analysis

On the basis of the undisputed evidence, I find that the Tenant's sister was occupying the rental unit, but she was not a tenant, and that she provided the Landlord with her forwarding address on April 16, 2014.

On the basis of the undisputed evidence, I find that the Landlord sent the Application for Dispute Resolution and the Notice of Hearing to the Tenant at the forwarding address provided by the Tenant's sister, via registered mail, on two occasions; and that the documents have not yet been received by the Tenant.

Section 89 of the *Residential Tenancy Act (Act)* authorizes a landlord to serve a tenant with an Application for Dispute Resolution by sending it, via registered mail, to a forwarding address provided by the tenant. As the forwarding address used for service was provided by the Tenant's sister, rather than the Tenant, I find that the Application for Dispute Resolution has not been served in accordance with section 89 of the *Act*.

In determining this matter I note that there is no evidence that the sister had the authority to act on behalf of her brother and/or that she had the ability/inclination to forward the documents to her brother.

As the Application for Dispute Resolution has not been served in accordance with section 89 of the *Act*, I find that I am unable to proceed in the absence of the Tenant. This Application is therefore dismissed, with leave to reapply.

Conclusion

The Landlord retains the right to file another Application for Dispute Resolution.

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 25, 2014

Residential Tenancy Branch

