



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 8868 INVESTMENTS LTD and PACIFIC SANDS APT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD MNDC O FF
 MNDC FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlord filed on July 11, 2014, seeking a Monetary Order for \$7,721.64 and the Tenant filed on May 21, 2014 seeking a Monetary Order for \$21,929.54. The Landlords listed two Tenants as respondents to their application; however, only one Tenant, M.V.Z., is listed as applicant to the Tenant's application.

The hearing was conducted by teleconference and attended by the Landlord. No one appeared on behalf of the Tenants despite M.V. being served with notice of the Landlord's application in accordance with the Act and despite M.V. Z. having his own application for dispute resolution scheduled for the same hearing date and time.

Issue(s) to be Decided

1. Have the Landlords proven that each Tenant was served Notice of the Landlord's application for dispute resolution?
2. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

At the outset of this hearing the Landlord stated that their former building managers served the documents to the Tenants by registered mail. The Landlord indicated that he had just recently taken over this file, after their managers left their employment suddenly, so he was not able to testify to the specifics of service.

No additional evidence was submitted in support of the Tenant's application, as no one was in attendance at the hearing, on behalf of the Tenant.

Analysis

Landlords' Application

Section 89(1) of the Act stipulates that 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*].

In the absence of the respondent Tenants, the burden of proof of service of the hearing documents lies with the applicant Landlord. The Landlord testified that because service was conducted by their former managers he was not able to provide testimony pertaining to service. Therefore, I find there to be insufficient evidence to prove the Tenants were served with Notice of this proceeding, in accordance with the Act.

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have not found that service of documents has been effected in accordance with section 89 of the Act, I dismiss the Landlords' application, with leave to reapply.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the

Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the application is dismissed, without leave to reapply.

Conclusion

I HEREBY DISMISS the Landlords' application, with leave to reapply.

I HEREBY DISMISS the Tenant's application, without 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: September 29, 2014

Residential Tenancy Branch

