Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DIVERSIFIED PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Preliminary Issue – Service of Dispute Resolution Package

At the hearing the landlord asked for an "abeyance". The landlord stated that this abeyance was necessary as the landlord had been unable to serve the tenants with the dispute resolution package.

Background and Evidence

The tenants' address for service is the business address of the corporate tenant.

On 12 March 2015, the landlord wrote to the Residential Tenancy Branch. In that letter the landlord explained that he was unable to serve the tenants with the landlord's evidence at the business address because the corporate landlord was in receivership.

The landlord stated at the hearing that he received the dispute resolution package, which he sent to the tenants at the corporate tenant's address, back from the corporate tenant's bankruptcy receiver. The landlord stated that he received this package the day before the hearing.

Analysis

I informed the landlord at the hearing that I was not aware of any ability to hold a file in abeyance and that I would be dismissing his application with leave to reapply. The landlord asked if I would provide him with a written decision. This is that decision.

A respondent must be served with notice of a dispute resolution hearing pursuant to section 89 of the Act. For an application such as the landlord's only the methods of service in subsection 89(1) may be used:

> **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;…
>
> (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;…

In this case, the landlord sent the dispute resolution package to the corporate tenant's place of business and the trustee of that business returned it. As such, the requirements of subsection 89(1) have not been met.

Pursuant to subsection 9(1) of the Act, the director may establish rules of procedure. These rules have been codified in the *Rules of Procedure*.

Rule 6.1 sets out that a hearing may be rescheduled by consent more than three days before the hearing date. In this case, the landlord did not have the tenants' consent to reschedule. Rule 6.1 allows a party to ask for a hearing to be rescheduled if that party cannot attend. In this case the landlord is the one asking for the rescheduling and he was able to attend the hearing. Rule 6.3 allows an arbitrator to adjourn a hearing to a later time after commencement of a proceeding. The landlord's request is not a matter of an adjournment—the hearing had not commenced as the tenants were not served and thus the application was procedurally flawed.

Further, subsection 59(3) sets out:

> … 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…

In this case, the date for service of the dispute resolution will be over six months from the date the application was filed. That period is far in excess of the three days prescribed by subsection 59(3).

On the basis that the tenants were not served with the dispute resolution package, I dismiss the landlord's application with leave to reapply.

The landlord may find subsection 71(1) and rule 3.4 helpful in serving any subsequent application:

> 71 (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.
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> 3.4 If a respondent avoids service
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> If a respondent appears to be avoiding service or cannot be found, the applicant may apply to the Residential Tenancy Branch for an order for substituted service.
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> An application for substituted service must show that the applicant made reasonable attempts to serve the respondent or provide evidence that shows the other party is unlikely to receive material if served according to the Act.
>
> An application for substituted service that is made at the hearing may result in an adjournment.

Leave to reapply is not an extension of any applicable time limit.

The pertinent limitation period is found in section 60 of the Act. Pursuant to subsection 3(2) of the *Limitation Act* and Residential Tenancy Policy Guideline "*16. Claims in Damages*", that act does not apply to this dispute. Accordingly, the relevant limitation period is two years from the end of this tenancy.

I cautioned the landlord at the hearing that there may be an issue of jurisdiction. Specifically paragraph 4(e) exempts from the Act living accommodation occupied as vacation or travel accommodation. The documentary evidence before me raises this jurisdictional issue. Specifically, there is reference to use as a seasonal property in the lease agreement and reference to sporadic use of the cabin in an email from the individual tenant.

Conclusion

The landlord's application is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 19, 2015

Residential Tenancy Branch