



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties' agents attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both gave sworn testimony that they had full authorization by the parties they were representing to act on their behalf at this hearing. The tenant's spouse represented the tenant's interests in this matter.

Issues(s) to be Decided

Has the landlord provided adequate notice of this hearing to the tenant in accordance with the *Act*?

Preliminary Issue – Service of Documents

The landlord's agent (the landlord) testified that she served the tenant with the dispute resolution package by sending it to him by registered mail on September 16, 2014, and subsequently by email. The landlord entered into written evidence a copy of the envelope containing the Canada Post Tracking Number, which the landlord testified was returned to her by Canada Post. The landlord testified that she sent this hearing package to an address provided to her on the tenant's application. The landlord also testified that she sent the tenant another copy of this hearing package to the tenant's

email address on March 20, 2015. The landlord testified that she sent copies of the landlord's written evidence, including a signed copy of the fixed term tenancy agreement in both the original hearing package sent by registered mail and the email. The landlord testified that the tenant signed the fixed term tenancy agreement to enable the tenant's son to reside in the rental unit.

Although the tenant's spouse attended the hearing, she gave sworn testimony that the tenant did not receive the hearing package sent by registered mail. She testified that the address where the landlord sent the hearing package is unknown to her or her husband. She said that the tenant did eventually receive notice of this hearing by email, but no written evidence. She testified that her husband has been the victim of identity theft, which has caused him ongoing problems over the past several years. She said that neither she nor her husband signed any tenancy agreement for this property. She said that she and her husband reside on Vancouver Island and have never made any payments nor are they aware of any tenancy with the landlord at this dispute address in the Lower Mainland. She said that her son lives in the same Lower Mainland community as the dispute address, but denied that any of her family entered into any type of tenancy agreement with the landlord. She testified that her husband, the tenant, knows nothing about the tenancy agreement in question, and was at a loss to understand the landlord's case against him.

Analysis – Service of Tenant's Application

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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 document]...*

Based on the sworn testimony of the parties and the landlord's written evidence, I find that the landlord has not served the tenant with a copy of the dispute resolution hearing

package to the tenant in accordance with section 89(1) of the *Act* so as to enable the tenant to know the case against him. Although the landlord sent a copy of the dispute resolution hearing package to the tenant by registered mail, this was sent to an address that was provided before this tenancy began, and one of which the tenant's spouse denies any knowledge. Section 88 of the *Act* does not allow the service of written evidence by email. The landlord's written evidence of the email sent to the tenant was returned as having failed permanently on March 20, 2015.

In addition, I note that neither the tenant nor the Residential Tenancy Branch have received the copy of the residential tenancy agreement the landlord claimed to have provided to both parties. While the tenant did eventually receive notice of the hearing and a Landlord and Tenant Fact Sheet, the tenant's spouse gave sworn testimony that these were the only documents provided to the tenant in advance of this hearing.

As I am not satisfied that the landlord has served sufficient documentation to the tenant in accordance with either section 89(1) or 88 of the *Act* to enable him to properly know the case against him and respond accordingly, I dismiss the landlord's application with leave to reapply.

At the hearing, both parties referred to considerable evidence that they both have to support their respective positions. In the event that the landlord submits a new application for dispute resolution, I advised both parties that they should take care to submit any written evidence that they wish considered to one another and the Residential Tenancy Branch well in advance of any new hearing.

Conclusion

I dismiss the landlord's application 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: April 15, 2015

Residential Tenancy Branch