



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEAMONT INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain 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.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent, JM ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he was the president of the landlord company named in this Application and that he had authority to represent it as an agent at this hearing.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") initially on December 18, 2014, by way of registered mail to the tenant's rental unit address. The landlord provided a copy of a Canada Post receipt and tracking number with its Application. The landlord confirmed that the package was returned to the landlord sender because the tenant had already vacated the rental unit and the landlord was aware of this at the time the package was mailed.

The landlord testified that the tenant was served with the landlord's Application again on January 12, 2015, by way of registered mail. The landlord provided a copy of a Canada

Post receipt and tracking number with its Application. The landlord confirmed that the Application was sent to the tenant's forwarding address, which the landlord said was provided by the tenant by way of a note found under the door on December 19, 2014. The landlord did not provide a copy of this note with its Application. The landlord testified that the tenant received the package because the package had not been sent back to the landlord. However, when I checked the Canada Post tracking number online during the hearing, the website confirmed that the package had been successfully returned to the sender on February 3, 2015, and that "LM" had signed for the package. The landlord stated that he was unaware of this and that when he attempted to research the issue with Canada Post the day before the hearing, he was unable to obtain information because it had been archived.

Analysis – Service of Landlord's Application

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows:

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;...

(c) by sending a copy by registered mail to the address at which the person resides ...;

(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 failed to sufficiently demonstrate that the tenant was served in accordance with section 89(1) of the *Act*. The landlord initially mailed the Application on December 18, 2014, to the tenant at the address at which she did not reside, contrary to section 89(1)(c) of the *Act*. The landlord confirmed that he was aware that the tenant had already vacated the rental unit prior to this mailing.

When the landlord mailed the application on January 12, 2015, he said that it was sent to the tenant's forwarding address. This is permitted by section 89(1)(d) of the *Act*. However, the landlord did not provide any documentary evidence to show that the tenant had provided this forwarding address to the landlord after she vacated the rental unit. The landlord did not provide the note that he says was received from the tenant. As I am unable to confirm that this was a forwarding address provided by the tenant in accordance with section 89(1)(d) of the *Act*, I am not satisfied that the tenant was

properly served with the landlord's Application. Moreover, this package appears to have been returned to the landlord sender.

For the above reasons, I am not satisfied that the tenant was served with the landlord's Application in accordance with section 89(1) of the *Act*. At the hearing, I advised the landlord that I was dismissing the landlord's Application for a monetary order for unpaid rent and to retain the tenant's security deposit, with leave to reapply.

Conclusion

The landlord's Application for a monetary order for unpaid rent and authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, is dismissed with leave to reapply.

The landlord's Application to recover the \$50.00 filing fee is dismissed without leave to reapply. The landlord must bear the cost of this filing fee.

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: July 23, 2015

Residential Tenancy Branch