



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOP PRODUCERS REALTY LTD. PM DIVISION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MND, MNSD, FF;  
CNC, OLC, RP, LRE, LAT, RR, FF

### Introduction

This hearing was reconvened in respect of the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

This hearing was also reconvened in respect of the tenants' application pursuant to the Act for:

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The application was originally set to be heard in June. As a result of time constraints, it was necessary to adjourn the hearings to be reconvened at a second date. The tenants did not attend at the second hearing date. The landlords LB and JB appeared. The corporate landlord was represented by its agent CD.

### Preliminary Issue – Disposition of Tenants' Claim

Rule 10.1 of the Rules of Procedure provides that:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenants did not appear at the second hearing to provide testimony or submissions in respect of their claim. In the absence of any evidence or submissions from the tenants and in the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without leave to reapply.

#### Preliminary Issue – Service of Notice of Reconvened Hearing

At the first hearing date I made the following order:

I order that the landlords' and tenants' applications are adjourned. **Notices of Reconvened Hearing are enclosed with this decision for each party to serve on the other party within three (3) days of receiving this interim decision in accordance with section 88 of the Act.**

The agent CD testified that she served the tenants with the notice of reconvened hearing by posting that notice to the tenants' address for service provided in the tenants' application. The tenants confirmed this address as their address for service at the first hearing date. CD testified that she believes that this address is an address of one of the tenants' parents.

Section 88 prescribes various means for service:

All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways: ...

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides ...
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;...
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides ...
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides ...

The address provided was an address for service and not a forwarding address as at the time of the tenants' application they were still occupying the rental unit. I was not provided with any evidence that would indicate that the tenants reside at the address for

service. Accordingly, the notice of reconvened hearing was not served in accordance with any of the above-noted paragraphs.

Paragraph 71(2)(c) allows me to order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act. In this case, the tenants used this address as their address for service in their application. Further, the tenants confirmed the address as their address for service at the hearing. It is clear that the tenants intended this address to be used for the purpose of serving documents in relation to the disputes before this Branch. I order that the notice of reconvened hearing was sufficiently delivered for the purposes of this Act.

#### Preliminary Issue – Landlords' Withdrawal

As the tenants elected not to appear at the reconvened hearing, the landlords expressed a desire to withdraw their current application on a without prejudice basis. As there is no prejudice to the tenants in allowing this withdrawal, the landlords are permitted to withdraw their application.

I cautioned the landlords at the hearing that their withdrawal would not extend any timeline prescribed by the Act.

#### Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords' application is withdrawn. The landlords are at liberty to reapply should they elect to do so, but are cautioned that this leave is not an extension of any applicable time limit under the Act.

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: August 19, 2015

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Residential Tenancy Branch