



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0931396 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF; CNR, MNDC, O

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, 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.

This hearing also dealt with the tenant's cross-application against both the individual landlord CG ("landlord") and the landlord company, pursuant to the *Act* for:

- cancellation of the landlord company's 10 Day Notice to End Tenancy for Unpaid Rent, ("10 Day Notice"), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- other unspecified remedies.

The tenant did not attend this hearing, which lasted approximately 31 minutes. The 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 she is the director and officer of the landlord company named in this Application and that she had authority to represent the landlord company as an agent at this hearing.

Preliminary Issue – Service of Landlord Company's Application

A previous hearing was held at the Residential Tenancy Branch ("RTB") in this matter on May 1, 2015, after which a decision, dated May 29, 2015, was issued by a different Arbitrator. That decision awarded monetary amounts to both parties, with the landlord obtaining \$0.30 more than the tenant after accounting for the monetary offset; given the amount, the Arbitrator declined to issue a monetary order to the landlord. The landlord company filed for a review of that decision on June 12, 2015, after which a new hearing was ordered for both the landlord's and tenant's applications. A different Arbitrator issued this review consideration decision, dated June 19, 2015. This current proceeding is the new review hearing that was ordered.

In the review consideration decision, the Arbitrator stated that the landlord company was required to serve the tenant with the review consideration decision and the notice of review hearing within 3 days of receiving that decision, dated June 19, 2015.

The landlord testified that she received the review consideration decision on July 1, 2015, and that the tenant was served with the review consideration decision and notice of review hearing on July 2, 2015, by way of registered mail to the tenant's rental unit address. The landlord provided a copy of the Canada Post receipt and tracking number to confirm this service. As of the date of this decision, the Canada Post website indicates that the package is being returned to its sender. The landlord confirmed that she was aware that the tenant had already vacated the rental unit at the time the package was mailed. The landlord noted that the tenant did not provide her with a forwarding address when she vacated the rental unit. The landlord provided copies of text messages she sent to the tenant when she mailed the package as well as the response to that text message stating that the tenant had not had that phone number for almost a year.

Analysis – Service of Landlord's Application

Section 89(1) of the *Act* outlines the methods of service for service of a review consideration decision (emphasis added):

89 (1) ...a decision of a 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** ...;*

*(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 mailed the review consideration decision and notice of review hearing to the tenant at the address at which the tenant did not reside, contrary to section 89(1)(c) of the *Act*. The landlord confirmed that she was aware that the tenant had already vacated the rental unit prior to this mailing. Further, the landlord confirmed that the tenant did not provide a forwarding address for service.

For the above reasons, I am not satisfied that the tenant was served with the review consideration decision and notice of review hearing in accordance with section 89(1) of the *Act*. At the hearing, I advised the landlord that she would have to **serve the review consideration decision and notice of review hearing in accordance with section 89(1) of the Act**.

The landlord inquired as to whether she could make a substituted service application at this hearing. I advised the landlord that I could not hear any substituted service application because the landlord did not apply for it prior to this hearing and she did not provide any documented evidence of another method by which she could serve the tenant. The landlord did not show whether she had recent communications with the tenant by way of another method not outlined in section 89 of the *Act*, such that she could serve the tenant by way of this other method.

I advised the landlord that she could make a substituted service application pursuant to section 71 of the *Act*, if required, if she was unable to locate the tenant in order to serve her by way of section 89 of the *Act*. I advised the landlord to obtain further details from the RTB, if required.

Although the tenant did not appear at this hearing to support her cross-application, I find that she may have been unable to appear because she was unaware of the outcome of the review consideration decision and the fact that a new hearing was ordered.

Under these circumstances, I dismiss both applications with leave to reapply as a reconvened review hearing of the original decision, dated May 29, 2015.

Conclusion

I dismiss both applications with leave to reapply as a reconvened review hearing of the original decision, dated May 29, 2015.

If the landlord applies for dispute resolution, the landlord must serve the tenant with the Review Consideration Decision and a copy of the ~~new~~ original application for dispute resolution and notice of review hearing in accordance with section 89(1) of the *Act*. If the tenant applies for dispute resolution, the tenant must serve the landlord with a copy of the ~~new~~ original application for dispute resolution and notice of review hearing in accordance with section 89(1) of the *Act*.

In accordance with the previous Arbitrator's review consideration decision, the **decisions and orders made in the decision, dated May 29, 2015, continue to be suspended until the outcome of any new review hearing.**

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: August 4, 2015

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON AUGUST 31, 2015
AT THE PLACES INDICATED.

Residential Tenancy Branch

