



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

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

- a monetary order 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 recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 41 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 hearing lasted 41 minutes because the landlord continued to ask the same questions and make the same comments, insisting that she was not being given a fair opportunity to be heard.

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") on July 10, 2015, by way of registered mail. The landlord provided a copy of a Canada Post receipt and tracking number with her Application. As of the date of this decision and as advised to the landlord at the hearing, the Canada Post website indicated that a final notice was given and the item would be returned to sender if not claimed within 10 days.

The landlord testified that the tenant was served at an address at which she currently resides. The landlord indicated that the tenant did not provide her with a forwarding address when she vacated the rental unit. The landlord stated that another tenant who was living above this tenant's rental unit provided her with the tenant's current mailing address. The landlord testified that the tenant's current landlord of her current address confirmed this same address to her. The landlord also indicated that a neighbour, who lives near the tenant, recently confirmed that the tenant still lives at this same address.

The landlord claimed that she attended a Provincial Court of B.C. ("PCBC") proceeding in June 2015, where the tenant was present. The landlord stated that she filed a Notice of Claim in the PCBC on June 12, 2014, indicating the same address for the tenant. The landlord provided a copy of this Notice of Claim. The landlord stated that the tenant filed a Reply to her Notice of Claim indicating this same address in July 2014. The landlord did not provide a copy of this Reply with her Application. The landlord also stated that the tenant was served with other PCBC documents which led her to attend the Court proceedings in June 2015 and that she still resides at the same address. The landlord confirmed that her PCBC matter was referred back to the Residential Tenancy Branch ("RTB") because the PCBC refused jurisdiction over this tenancy matter.

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 (emphasis added):

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].

I find that the landlord has failed to sufficiently demonstrate that the tenant was served in accordance with section 89(1) of the *Act*.

As repeatedly advised to the landlord during this hearing, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: the best evidence available should be provided.

The tenant did not attend this hearing. The landlord did not provide sufficient documentary evidence, which was available at the time of this hearing, to show that the tenant resides at the address or that the tenant provided the forwarding address, at which the landlord served her with the Application. The landlord did not provide the Reply, which she said was filed by the tenant in the PCBC, indicating this address. No witnesses, including the tenant's current landlord, the tenant's current neighbour, or the tenant formerly living above this tenant in the rental unit, testified or provided any written statements for this hearing to confirm that they are aware of the address at which the tenant currently resides. The landlord also provided a copy

of a text message which she said was received from the tenant, where only an email address was provided by the tenant, when the landlord asked the tenant for a forwarding address.

Accordingly, I am unable to confirm that this is an address at which the tenant resides or that it is a forwarding address provided by the tenant in accordance with sections 89(1)(c) or (d) of the *Act*. 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 her Application for a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, with leave to reapply. I advised the landlord during the hearing that if she decided to make a new application for dispute resolution, that she would be required to pay a new filing fee.

Throughout this hearing and particularly when giving my oral reasons, the landlord became increasingly upset and repeatedly interrupted me. I warned the landlord several times about her conduct during this conference and the fact that it was inappropriate. However, the landlord continued with the same behaviour, despite my warnings. The landlord frequently repeated the same questions and comments throughout the hearing. Despite my attempts to clarify the same information repeatedly and after advising the landlord that my role was not to provide her with legal advice during the conference, the landlord continued to ask the same questions and make the same comments. After confirming the landlord's mailing information and while I was making final comments, the landlord disconnected from the conference without warning.

Conclusion

The landlord's Application for a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, 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: August 04, 2015

Residential Tenancy Branch

