



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAROD PROPERTIES CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

- 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 the filing fee for this application from the tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 13 minutes. The landlord's agent JN ("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 is the property manager for the landlord company named in this application and that he had authority to speak on behalf of the landlord company at this hearing.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ("Application") on May 6, 2015, by way of registered mail. The landlord provided two copies of envelopes addressed to the tenants with Canada Post tracking numbers. The landlord did not provide any Canada Post receipts to confirm service.

The landlord stated that he obtained the tenants' forwarding address on April 30, 2015, during the move-out condition inspection. He indicated that it was a difficult move-out condition inspection, whereby one of the tenants became threatening and the police

were called. The landlord explained that he asked the police officer to obtain a forwarding address from one of the tenants at this time. The landlord maintained that he was given an address by the police, although he could not recall whether it was given verbally or in writing. The landlord did not produce any documents from the police or otherwise, to indicate the method by which this forwarding address was obtained.

The landlord produced the move-out condition inspection report, where he confirmed he personally wrote down the tenants' forwarding address under the "landlord's address" section. The landlord confirmed that the report was not signed by the tenants. The landlord did not confirm whether the tenants' address was a service address for one tenant or both tenants. Later during the hearing, the landlord claimed that the address was for both tenants because they lived together. The landlord then claimed that he sent a cheque to the tenants at their forwarding address. The landlord maintained that this cheque was cashed by the tenants. The landlord did not provide any documentary evidence regarding the above information.

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].

The landlord has failed to sufficiently demonstrate that the tenants were served at a forwarding address provided by them, in accordance with section 89(1) of the *Act*. The landlord did not obtain a forwarding address directly from the tenants. The landlord obtained an address through a third party, a police officer, but did not provide any documentary evidence confirming same. The landlord did not know whether the address was for one or both tenants. The landlord then changed his testimony later in the hearing to indicate that the address was for both tenants. The landlord did not provide documentary evidence confirming that a cheque sent to this address was cashed by the tenants.

As I am unable to confirm that this is a forwarding address provided by the tenants in accordance with section 89(1)(d) of the *Act*, I am not satisfied that the tenants were properly served with the landlord's Application pursuant to section 89(1). At the hearing, I advised the landlord about my findings regarding service. I was unable to advise the landlord about my decision regarding the landlord's application, due to the events that transpired as described below.

At the outset of this hearing, the landlord informed me that he had undergone a dental procedure that morning. Throughout this hearing and particularly when giving my oral findings, the landlord became increasingly upset and repeatedly interrupted me. The landlord then inquired as to the name of the Director of the Residential Tenancy Branch ("RTB") so that he could make a complaint. I advised the landlord that he could contact the RTB main information line to obtain the Director's name and contact information to make a complaint. The landlord then became confrontational, advising me that he was now recording the conference call proceeding. I advised the landlord that he was not permitted to record the conference call proceeding. The landlord then claimed that he was permitted to record the conference call. At that time, I advised the landlord that the hearing was ended and I concluded the conference.

For the landlord's information, Rule 9.1 of the RTB *Rules of Procedure* states:

"Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted."

Conclusion

The landlord's application to retain all or a portion of the tenants' 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 for this application from the tenants, is dismissed without 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: October 13, 2015

