



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, O, 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, pursuant to section 67;
- other unspecified relief; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The three tenants did not attend this hearing, which lasted approximately 42 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.

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 22, 2015 and again on May 29, 2015, both by way of registered mail. The landlord stated that she sent a written evidence package by way of registered mail on June 4, 2015. The landlord provided Canada Post receipts and tracking numbers for all three dates. The landlord testified that all three mail packages were returned to her.

The landlord testified that she obtained the tenants' forwarding address on April 30, 2015. She stated that this was the same date that the tenants vacated the rental unit. The landlord explained that a "new landlord" telephoned her for a reference check regarding the tenants on April 23, 2015. She maintained that she was given a general street address by the new landlord at that time, who had not accepted the tenants into a new unit at that time. The landlord confirmed that she phoned the new landlord on April 30, 2015 to ask whether the tenants had moved into the rental unit and where to send their mail. She stated that the new landlord sent her a text message on the same date to advise her of the exact mailing address of the tenants. The landlord did not provide

any documentary evidence regarding the above information. The landlord stated that she phoned the new landlord again on June 4, 2015, and she was given the same address. The landlord explained that the tenants “should” be living at the address at which she served them with all three mail packages. The landlord confirmed that the tenants did not provide her with their forwarding address after vacating the rental unit, as they have refused to answer the landlord’s repeated telephone calls and text messages.

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 the address at which they reside or a forwarding address provided by them, in accordance with sections 89(1)(c) or (d) of the *Act*. The landlord did not obtain a forwarding address directly from the tenants. The landlord has been unable to contact the tenants. The landlord obtained an address through a third party, a new landlord, but did not provide any documentary evidence confirming same. All three of the mail packages were returned to the landlord.

As I am unable to confirm that this is an address at which the tenants reside or a forwarding address provided by them, in accordance with sections 89(1)(c) and (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 decision regarding service. I advised the landlord that she would be required to file a new application and pay another filing fee, if she wished to pursue this matter.

I advised the landlord that if she was unable to serve the tenants in accordance with section 89(1), she could apply for a substituted service order pursuant to section 71 of the *Act*. I suggested that if the landlord was able to contact the tenants by way of

another method outside of section 89(1), such as by email, and she was able to provide recent communications with them by this other method, she could apply for substituted service. I advised the landlord that she could not serve the tenants by way of email or another method outside of section 89(1), without a substituted service order from an Arbitrator first.

Conclusion

The landlord's application for a monetary order for damage to the rental unit and for other unspecified relief, is dismissed with leave to reapply.

The landlord's application to recover the \$100.00 filing fee for this application 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 27, 2015

Residential Tenancy Branch

