



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord'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, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 19 minutes. The landlord's two agents, ZB and KD (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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 August 30, 2016, by way of mail courier and in person.

The landlord stated that the tenant provided a forwarding address in an email. The landlord did not provide this email with its Application documents. The landlord initially said that the tenant provided an incorrect address and the landlord personally attended at this address to verify if the tenant was there but a different couple answered the door, not the tenant.

The landlord stated that the Application was mailed to the tenant and returned to the landlord. The landlord maintained that the Application was then mailed out again and

the tenant was living at the address after. The landlord did not provide any other service date besides August 30, 2016. The landlord later testified that the courier attended at the address and personally served the tenant on August 30, 2016.

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 with the landlord's Application in accordance with section 89(1) of the *Act*. The tenant did not attend this hearing. The landlord did not provide documentary evidence to show that the tenant lived at the above address or the tenant provided this forwarding address to the landlord.

The documents from the courier company indicate that attempts were made to call the tenant and that access was granted by another tenant and the Application was then posted to a mail box, which is not permitted for service of a monetary application. There is no evidence in the courier documents or the landlord's other Application documents, that the tenant was served in person or that she signed for any documents. Despite the landlord's assertions that the tenant signed for the Application, there are only notes from the courier indicating that attempts were made to locate the tenant.

As I am unable to confirm that this was an address at which the tenant resides or a forwarding address provided by the tenant in accordance with sections 89(1)(c) or (d) of the *Act*, I am not satisfied that the tenant was served with the landlord's Application. At the hearing, I advised the landlord that I was dismissing the landlord's application with leave to reapply. The landlord is required to file a new application and pay a new filing fee if it wishes to pursue orders against the tenant. I also told the landlord that

service would have to be proven at the next hearing, regarding how the landlord obtained the tenant's residential or forwarding address.

The landlord's application to recover the \$100.00 filing fee for this Application is dismissed without leave to reapply. The landlord must bear the cost of this fee.

Conclusion

The landlord's Application 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*, *Regulation* or tenancy agreement, as well as to retain the security deposit, is dismissed with leave to reapply.

The landlord's Application to recover the \$100.00 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: October 19, 2016

Residential Tenancy Branch