



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT 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 tenants' security deposit in partial satisfaction of the monetary award, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, male and female, did not attend this hearing, which lasted approximately 23 minutes. The landlord KP ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the lead residential property manager and that she had authority to speak on behalf of the landlord company named in this application as an agent at this hearing. "Witness HG" and "Witness VL" both testified on behalf of the landlord regarding service, at this hearing.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenants were each served separately with a copy of the landlord's application for dispute resolution hearing package on May 30, 2016 ("first package") and the written evidence package on May 31, 2016 ("second package"), both by way of registered mail.

The landlord said that the first package was returned to sender but the second package was signed for by the male tenant. When I notified the landlord that the Canada Post tracking website did not show the signature or name of the male tenant as having signed for the second package, she said that her printout showed a signature, yet I had

not received a copy of this printout from the landlord. The landlord said that she was surprised that the male tenant signed for the second package because she thought he was out of the country. She said that both tenants were likely out of the country at the current time.

The landlord provided a copy of a move-out condition inspection report ("report") which was not signed by the tenants, where she said she personally wrote down an address that she said the male tenant verbally provided to her when he returned the keys upon moving out. Beside the address is a notation that the address was provided when the keys were returned by the tenants. Above the address is a notation that the tenant was out of country and a discussion would take place when the tenant returned to Canada.

Initially, the landlord testified that witness VL obtained the written forwarding address from the male tenant and wrote it on the report. Witness VL testified that the landlord told her that the tenants provided a forwarding address when returning the keys so she made the notation that the address was provided when the keys were returned. She said she did not write down the address itself, only the landlord did. Witness VL said that she did not specifically hear the tenants give their forwarding address because she was doing other tasks at the front desk and she was out of hearing range. She said she only knew that the tenants were having a conversation with the landlord. The landlord then testified that she personally wrote down the address in the report and witness VL only made the notation that the address was provided when the keys were returned.

The landlord further stated that witness HG heard the conversation when the male tenant provided his forwarding address. Yet, witness HG testified that she did not hear the conversation, she was simply working in the same area doing other tasks.

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 failed to provide sufficient evidence that the two tenants were served with the landlord's application at an address at which they were residing or a

forwarding address provided by them, in accordance with section 89(1) of the *Act*. The tenants did not attend this hearing. The first package containing the application and notice of hearing was returned to sender. Witness HG and witness VL did not hear the conversation that supposedly occurred between the landlord and the male tenant where the forwarding address was provided. The landlord changed her testimony throughout the hearing. The landlord made notations on the report that the tenant was out of the country at the time the report was completed and further stated that both tenants were likely still out of the country at the current time.

As the landlord failed to prove service in accordance with section 89(1) of the *Act*, I find that the tenants were not 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, with the exception of the \$100.00 filing fee. I notified the landlord that she would be required to file a new application and pay a new filing fee if she wished to pursue this matter further. I notified the landlord that she would have to prove service at the next hearing, regarding any forwarding or residential addresses obtained from the tenants.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed with 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: November 25, 2016

Residential Tenancy Branch