



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- authorization to retain the tenant's security deposit, pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 24 minutes. The landlord's two agents, landlord AL ("landlord") and "landlord BF" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both landlord agents confirmed that they were property managers with the landlord company named in this application and that both had authority to represent it at this hearing.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with a copy of the landlord's application for dispute resolution hearing package on July 15, 2016, by way of registered mail. The landlord stated that the tenant was served with the landlord's written evidence package on December 28, 2016, also by way of registered mail. The landlord provided two Canada Post tracking numbers verbally during the hearing.

The landlord claimed that he sent the application to a forwarding address provided by the tenant on a move-out condition inspection report on June 30, 2016. The landlord said that he faxed this report into the Residential Tenancy Branch ("RTB") on December 28, 2016, but I had not received it.

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 or a decision of the director to proceed with a review under Division 2 of Part 5, 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;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the **address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (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 tenant was served with the landlord's application at a forwarding address provided by him, in accordance with section 89(1) of the *Act*. The tenant did not attend this hearing. The landlord did not provide documentary evidence of the tenant's forwarding address. The landlord's written evidence package was sent late to the tenant, less than 14 days prior to the hearing, contrary to Rule 3.14 of the *RTB Rules of Procedure*, so I could not consider it even if I had received it at the RTB prior to the hearing, which I had not.

As the landlord failed to prove service in accordance with section 89(1) of the *Act*, I find that the tenant was 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, except for the filing fee.

I notified the landlord that if the landlord wished to pursue this matter further, a new application would have to be filed along with paying another filing fee. I notified the landlord that service would have to be proven at the next hearing along with respecting the timelines in the *RTB Rules of Procedure*.

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: January 16, 2017

Residential Tenancy Branch