



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1069857 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDL-S MNRL-S**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for damages or compensation and unpaid rent and authorization to retain the security deposit pursuant to sections 67 and 38.

The tenant did not attend this 1:30 P.M hearing, although I left the teleconference hearing connection open until 1:42 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by his counsel, CP ("landlord"). The landlord was given a full opportunity to be heard, to present submissions, and to call witnesses.

Preliminary Issue

On May 7, 2019, the landlord filed an application to amend his dispute resolution proceedings to remove the originally named tenant, a numbered company, and replace it with the tenant named on the cover page of this decision. As both tenants were named on the tenancy agreement filed in this proceeding, in accordance with Rule 4 of the Residential Tenancy Branch Rules of Procedure, I allowed the amendment.

Preliminary Issue – service of documents

Counsel for the landlord provided evidence and gave submissions advising the tenant was served with the application for dispute resolution package and the amendment by sending the documents by registered mail to the tenant at the registered office of the previously named co-tenant, the numbered company. The tracking number for this mailing is listed on the cover page of this decision. Counsel submits that he properly served the tenant in accordance with section 90(1)(a) of the *Act* which reads:

A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:
(a) if given or served by mail, on the 5th day after it is mailed.

Counsel submits that since the tenant is a director of the numbered company who lists his address on the company search as the same as the registered office of the numbered company, the landlord has fulfilled his obligation to serve the tenant with the previously listed documents. A copy of the company search for the numbered company, now dissolved, has been filed as evidence by the landlord.

Analysis

An application for dispute resolution is a document referred to in section 89 of the *Act*, requiring special rules regarding service. Section 89(1) reads: (emphasis added)

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*].

In this case, the named tenant was not personally served, nor was he served by registered mail to the address at which he resides. The landlord has not served the application for dispute resolution proceedings in accordance with 89(1)(a) or (c).

I am not satisfied the landlord has served the tenant with the application for dispute resolution pursuant to section 89 and 90 of the *Act*. The application is dismissed with leave to reapply.

The landlord is at liberty to file an application to seek an order respecting delivery and service of documents in accordance with section 71.

As the landlord was not successful in his application, the landlord is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's application for a monetary order is dismissed with leave to reapply.

The landlord is to continue to hold the tenant's security deposit until dealt with in accordance with the *Act*.

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: June 4, 2019

Residential Tenancy Branch