



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNDCL, FFL

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 and for compensation 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 5 minutes. The landlord's agent ("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 property portfolio manager for the landlord company named in this application and that she had permission to speak on its behalf.

Preliminary Issue – Service of Landlord's Application

The landlord stated that the tenant was served with a copy of the landlord's application for dispute resolution hearing package on October 21, 2020, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. She said that the mail was returned to sender as unclaimed.

The landlord stated that she obtained a forwarding address for the tenant on September 2, 2020, from income assistance. The landlord provided a copy of the email. The landlord confirmed that the tenant did not provide a forwarding address when she vacated the rental unit on August 31, 2019.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my 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;*
- (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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

Accordingly, I find that the tenant was not served with the landlord's application, as per section 89 of the *Act*.

I find that the landlord was unable to provide sufficient documentary proof of a forwarding address provided by the tenant, as required by section 89(1)(d) of the *Act*. The landlord obtained an address from income assistance, not the tenant. The tenant did not provide a forwarding address to the landlord when she vacated the rental unit. The landlord's email of September 2, 2020 is over one year after the tenancy ended on August 31, 2019. The tenant did not attend this hearing to confirm service. The mail was returned to the landlord sender.

I notified the landlord that the landlord's application was dismissed with leave to reapply, except for the filing fee. I notified her that the landlord could file a new application, pay another filing fee and provide proof of service at the next hearing, if the landlord chooses to pursue this matter further. The landlord confirmed her understanding of same.

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: February 04, 2021

Residential Tenancy Branch