



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, 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, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 6 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 resident services coordinator for the landlord company named in this application and she had permission to speak on its behalf. She confirmed the rental unit address during this hearing.

At the outset of this hearing, I informed the landlord that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord. She had an opportunity to ask questions. I informed her that I could not provide legal advice to her. The landlord did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenants were both served with two copies of the landlord's application for dispute resolution, notice of hearing and first evidence package, both by way of registered mail on April 30, 2021. She claimed that the second evidence package was sent to both tenants on October 6, 2021, by way of registered mail.

The landlord said that she sent the above documents to a forwarding address provided by the tenants in an email, dated April 2, 2021. She claimed that she had the email in her possession, but she did not provide a copy for this hearing

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.*

I find that the landlord did not serve the tenants with the landlord's application, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12.

I find that the landlord failed to provide documentary proof of a forwarding address provided by the tenants and when that address was given to the landlord. The landlord claimed that she had an email from April 2, 2021, but she did not provide a copy for this hearing. The landlord had ample time from filing this application on April 20, 2021 to this hearing date of October 25, 2021, a period of over six months, to provide this information. The tenants did not attend this hearing to confirm service.

I notified the landlord that the landlord's application was dismissed with leave to reapply, except for the filing fee. I informed her that the landlord could file a new application and pay a new filing fee, if the landlord decides to pursue this matter further. I notified her that the landlord's evidence, as the applicant, is due at least 14 days prior to the hearing date, not including the service or hearing dates, as per Rule 3.14 of the RTB *Rules of Procedure*. 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: October 25, 2021

Residential Tenancy Branch