



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female Tenant via registered mail at the address noted on the Application, on October 06, 2010. The Landlord submitted Canada Post Documentation that corroborates this statement. The Agent for the Landlord stated that the address noted on the Application was provided by the Tenants as a forwarding address at the end of this tenancy. In the absence of evidence to the contrary, I find that these documents have been served to the female Tenant in accordance with section 89 of the *Act*, however she did not appear at the hearing.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant via registered mail at the address noted on the Application, on October 06, 2010. The Landlord submitted Canada Post Documentation that corroborates this statement. The Agent for the Landlord stated that the address noted on the Application was provided by the Tenants as a forwarding address at the end of this tenancy. In the absence of evidence to the contrary, I find that these documents have been served to the male Tenant in accordance with section 89 of the *Act*, however he did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damages to the rental unit; compensation for paying the rent late and for tendering a cheque that was returned by the Tenants' financial institution; to retain all or part of the

security deposit paid by the Tenants; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord stated that evidence in support of the Landlord's claims for compensation was not served on the Tenants when they were served with the Application for Dispute Resolution on October 06, 2010.

The Agent for the Landlord stated that on January 12, 2011 evidence in support of the Landlord's claims for compensation was personally delivered to the postal outlet where the Tenants have a post box, which is the forwarding address they provided as their forwarding address.

Analysis

The Landlord was obligated to serve evidence in support of the Application for Dispute Resolution in a manner that complies with section 88 of the *Residential Tenancy Act (Act)*.

Section 88(a) of the *Act* authorizes a landlord to serve evidence by leaving it with the person. There is no evidence to show that the Landlord personally served its package of evidence to the Tenant, therefore I cannot conclude that the Landlord served evidence in accordance with section 88(a) of the *Act*.

Section 88(c) of the *Act* authorizes a landlord to serve evidence by sending a copy by mail to the address at which the person resides. There is no evidence to show that the Landlord's package of evidence was mailed to the Tenants' residence, therefore I cannot conclude that the Landlord served evidence in accordance with section 88(c) of the *Act*.

Section 88(d) of the *Act* authorizes a landlord to serve evidence by sending a copy by mail to a forwarding address provided by the tenant. In my view, personally delivering a package to the postal outlet where the Tenants have a post box is the same as mailing the package via Canada Post. Although the package was not physically delivered to the postal outlet by a Canada Post employee, it was physically delivered to the mail box by a Canada Post employee or a Canada Post contractor. I therefore find that the Landlord's evidence package that was delivered to the postal outlet where the Tenants have a post box, which is the forwarding address they provided as their forwarding address, was served in accordance with section 88(d) of the *Act*. In the absence of evidence to the contrary, I accept the Agent for the Landlord's testimony that this evidence package was delivered on January 12, 2011.

Section 88(e) of the *Act* authorizes a landlord to serve evidence by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. There is no evidence to show that the Landlord's evidence package was left at the Tenant's residence with an adult who resides with the Tenants. Therefore I cannot conclude that the Landlord served evidence in accordance with section 88(e) of the *Act*.

Section 88(f) of the *Act* authorizes a landlord to serve evidence by leaving a copy in the mail box or mail slot for the address at which the person resides. There is no evidence to show that the Landlord left the evidence in the mail box or mail slot at the Tenants' residence. Therefore I cannot conclude that the Landlord served evidence in accordance with section 88(f) of the *Act*.

Section 88(g) of the *Act* authorizes a landlord to serve evidence by attaching a copy to a door or other conspicuous place at the address at which the person resides. There is no evidence to show that the Landlord posted evidence at the Tenants' residence. Therefore I cannot conclude that the Landlord served evidence in accordance with section 88(g) of the *Act*.

Section 88(h) of the *Act* authorizes a landlord to serve evidence by transmitting a copy to a fax number provided by the tenant as a service address. There is no evidence to show that the Landlord faxed evidence to the Tenants. Therefore I cannot conclude that the Landlord served evidence in accordance with section 88(h) of the *Act*.

Section 88(i) of the *Act* authorizes a landlord to serve evidence as ordered by the director under section 71(1) of the *Act*. There is no evidence to show that the Landlord was provided with direction on how to serve evidence to the Tenant. Therefore I cannot conclude that the Landlord served evidence in accordance with section 88(i) of the *Act*.

Section 90(a) of the *Act* stipulates that a document that is served by mail is deemed to have been served on the fifth day after it is mailed. I therefore find that the evidence package that was mailed to the Tenants on January 12, 2011 is deemed to have been served to the Tenants on January 17, 2011.

Residential Tenancy Branch Rules of Procedure stipulate that evidence must be served on the other party at least five days before the dispute resolution proceeding. I find that evidence that was mailed on January 12, 2011 and deemed served on January 17, 2011 has, therefore, not been served in accordance with the timelines established by the Rules of Procedure.

Conclusion

After being advised that the Landlord's evidence package would not be considered at these proceedings as it was not served in accordance with the timelines established by the Rules of Procedure, the Agent for the Landlord elected to withdraw the Landlord's Application for Dispute Resolution. The Agent for the Landlord elected to withdraw the Landlord's Application for Dispute Resolution because the evidence excluded from these proceedings is integral to the claim for compensation being made by the Landlord.

I consider the Landlord's Application for Dispute Resolution to be withdrawn. The Landlord retains the right to file another Application for Dispute Resolution claiming compensation arising from this tenancy.

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 20, 2011.

Residential Tenancy Branch