



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to an application by the landlords for permission to retain the security deposit / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. One Landlord attended and gave affirmed testimony. Neither tenant appeared.

The landlord testified that he served the tenants with the application for dispute resolution and notice of hearing (the “hearing package”) in addition to documentary evidence, by way of registered mail. Evidence includes the Canada Post tracking numbers for the registered mail, and the Canada Post website informs of “Attempted delivery. Notice card left indicating where item can be picked up.” Ultimately, however, neither item was picked up and both hearing packages were successfully returned to the landlord. Service of the hearing package(s) is addressed more fully below.

Issue(s) to be Decided

Whether the hearing package(s) have been sufficiently served for the purposes of the Act.

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from September 1, 2011 to August 31, 2012. Thereafter, tenancy was to continue on a month-to-month basis. Monthly rent of \$1,300.00 was due and payable in advance on the first day of each month, and a security deposit of \$650.00 was collected. There is no move-in condition inspection report in evidence.

Pursuant to a direct request proceeding an order of possession and a monetary order for unpaid rent were issued in favour of the landlords by decision dated June 18, 2012.

Thereafter, following notice of their intention to inspect the unit, when the landlords attended the unit on June 24, 2012 they found that the tenants had left. No forwarding address was provided and the landlords found a unit in need of cleaning and repairs. There is no move-out condition inspection report in evidence.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 88 of the Act addresses **How to give or serve documents generally**. Section 89 of the Act speaks to **Special rules for certain documents**, and provides in part:

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*].

In the circumstances of this dispute, as previously noted, the tenants did not provide a forwarding address after vacating the unit in June 2012. The landlord testified that the address used for service of the hearing packages in the case of the current dispute, was provided to him by neighbours. The landlord said his son delivered a document(s) to the subject address as a means of confirming whether the tenants did indeed reside

there. The landlord testified that, following this, tenant “FW” attended the landlord’s residence and indicated that he wished to have no ongoing contact. Subsequently, the landlord mailed the hearing packages to that same address, and stated that he is reluctant to have any direct contact with the tenants.

I presently find that the information related to the address used for service is insufficient for the purposes of the Act. Section 71 of the Act addresses **Director’s orders: delivery and service of documents:**

71(1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Conclusion

The landlords’ application is hereby 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: March 07, 2013

Residential Tenancy Branch

