



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord attended and gave affirmed testimony. Neither tenant appeared.

Issue(s) to be Decided

- 1) Were the tenants served in accordance with the relevant statutory provisions?
- 2) If the tenants were properly served, is the landlord entitled to the above under the Act, Regulation or tenancy agreement?

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the landlord testified that the fixed term of tenancy was from November 01, 2014 to November 01, 2015. Monthly rent was \$1,500.00, and a security deposit in that same amount was collected.

During the evening of December 17, 2014, one of the tenants was said to be operating a remote control helicopter within the unit. In the result, a sprinkler head was knocked off by the helicopter and water damage ensued. The fire department was called, the sprinkler head was replaced, restoration work began and was not completed until the end of March 2015, a fine was levied by the strata council, and the landlord filed a claim with his insurance provider. The landlord's application for dispute resolution was filed on January 29, 2015. In his application the landlord seeks miscellaneous costs in association with all of the foregoing which are in excess of \$5,000.00.

The landlord testified that the tenants vacated the unit on the evening when the damage occurred on December 17, 2014, and did not provide a forwarding address. The landlord served the tenants with his application for dispute resolution and the notice of

hearing (the “hearing package”) by way of registered mail sent to the unit address on January 30, 2015. The landlord testified that his understanding was that the tenants’ mail was to be forwarded by Canada Post to the tenants’ new residence up until February 28, 2015. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was “refused by recipient.”

Further evidence submitted by the landlord includes a photocopy of text messages exchanged between the parties. In summary, the landlord informed male tenant “NMG” by text message dated January 30, 2015, in part, that he “sent you the hearing documents today.” Subsequently, by text message dated February 01, 2015 tenant “NMG” responded, “Thanks.” Thereafter, by text message dated February 06, 2015 the landlord informed male tenant “NMG”, in part, that “the hearing documents are available for pick up at [name of post office].” There is no record of a tenant’s response to the second text message from the landlord.

Subsequent to filing his application, the landlord submitted additional documentary evidence to the Residential Tenancy Branch on April 07, 2015. There is no documentary evidence before me in relation to how that additional evidence may have been served on the tenants.

Analysis

As to service of documents, 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 as follows:

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*].

Section 71 of the Act addresses **Director's orders: delivery and service of documents**, and provides in part as follows:

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*];

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, and in consideration of the above statutory provisions, I find that there is insufficient evidence before me that the tenants were served with the hearing package and / or supporting documentary evidence in accordance with the above statutory provisions. In the result, the landlord's application is dismissed with leave to reapply.

Conclusion

The landlord's 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: August 12, 2015

Residential Tenancy Branch

