



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MND,

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 unpaid rent, and for a monetary Order for damage.

Issue(s) to be Decided

Is the Landlord entitled to compensation for compensation for clearing personal property; for unpaid rent; and for costs associated to participating in these proceedings?

Background and Evidence

The Agent for the Landlord stated that:

- on July 17, 2016 the Application for Dispute Resolution and Notice of Hearing were sent, by registered mail, to the mailing address used by the Tenant during the tenancy;
- the site had been vacated by July 17, 2016;
- she does not know if the Tenant was still using that mailing address after the site was vacated;
- the Tenant did not provide a forwarding address after the site was vacated;
- on July 17, 2016 the Application for Dispute Resolution and Notice of Hearing were sent, by registered mail, to the Tenant's place of employment;
- a third party at the Tenant's place of employment signed for this registered mail;
- the registered mail that was sent to the Tenant's place of employment was subsequently returned to Canada Post, without being opened;
- this Application for Dispute Resolution and Notice of Hearing was also served to the third party who attended this hearing, because she believed he may have been representing the Tenant in these matters;
- she now understands this third party is not representing the Tenant in these matters;

- she understands the Tenant has not been properly served with the Application for Dispute Resolution and Notice of Hearing; and
- she intends to apply for authority to serve these documents to the Tenant in an alternate manner.

The third party who attended this hearing stated that:

- he has represented other people in this residential complex;
- he does not represent the Tenant in these matters; and
- the Tenant is aware that he is attending this hearing because he was served with the Application for Dispute Resolution and Notice of Hearing.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served with the Application in accordance with section 89(1)(a) of the *Act*.

On the basis of the undisputed evidence I find that the Application for Dispute Resolution was mailed to the Tenant at the mailing address he used when he was living on the site. As there is no evidence to establish that the Tenant is still using that mailing address as his residential address when the document was mailed, I cannot conclude that he was served with the Application in accordance with section 89(1)(c) of the *Act*.

As there is no evidence to establish that the Tenant advised the Landlord that he could use his previous mailing address as a forwarding address, I cannot conclude that he was served with the Application in accordance with section 89(1)(d) of the *Act*.

On the basis of the undisputed evidence I find that the Application for Dispute Resolution was mailed to the Tenant's place of employment. As there is no evidence to establish that the Tenant provided the address of his place of employment as a forwarding address, I cannot conclude that he was served with the Application in accordance with section 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner and I therefore cannot conclude that he was served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the Application for Dispute Resolution was properly served to the Tenant, I am unable to proceed with the hearing in the absence of the Tenant.

Conclusion

As the Landlord has failed to establish that the Application for Dispute Resolution was properly served to the Tenant, the Application for Dispute Resolution 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 *Act*.

Dated: January 16, 2017

Residential Tenancy Branch