Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, LAT, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. At the hearing, I heard arguments from both parties with respect to the process followed by the tenant in serving his documents and the substantive arguments pertaining to his application for dispute resolution.

Issues(s) to be Decided

Has the tenant served a copy of his dispute resolution hearing package including his application for dispute resolution in accordance with the *Act*? If not, have the landlord's rights to a fair hearing been so prejudiced as to require dismissal of the tenant's application with leave to reapply? If the tenant's application were not dismissed with leave to reapply, should orders be issued for any of the items requested by the tenant in his application for dispute resolution?

Preliminary Matters – Service of Documents

The tenant testified that he served the landlord with his dispute resolution hearing package by placing it in the mail slot of the landlord's resident building manager on January 3, 2012. The landlord's representatives denied having received notification of this hearing until the hearing notice and the tenant's written evidence were placed in the mail slot of the landlord's resident building manager on the evening of January 10, 2012.

The landlord's female representative at this hearing (the landlord) provided oral and late written evidence that the lateness of the tenant's provision of notice of this hearing compromised the landlord's opportunity to provide a written response to the case against the landlord. The landlord testified that she sent a copy of the landlord's written evidence to the tenant by registered mail on January 16, 2012. The copy of the Canada Post Customer Receipt and Tracking Number she entered into written evidence noted that the landlord's written evidence package was sent to the tenant by registered mail on January 14, 2012. The tenant testified that he has not yet received the landlord's written evidence, received by the Residential Tenancy Branch on January 13, 2012.

Analysis – Service of Documents

Section 90(a) of the *Act* establishes that documents sent by mail or registered mail are deemed served on the fifth day after their mailing. In this case, the landlord's written evidence sent to the tenant is deemed to be served on January 19, 2012, the day after this hearing. As the tenant does not have the landlord's written evidence and this evidence is not deemed served until after this hearing was scheduled to convene, I have not considered the landlord's written evidence.

I note the timing of the landlord's provision of written evidence to demonstrate that the issue of the tenant's provision of notice of this hearing to the landlord has had a direct impact on the landlord's opportunity to meet the case against the landlord. If the tenant served notice to the landlord of this hearing on January 3, 2012 as he maintained then the landlord had ample opportunity to submit evidence in support of the landlord's position. However, if the landlord is correct in testifying that notice of the tenant's dispute resolution hearing application and this hearing were not provided by the tenant until the evening of January 10, 2012, the landlord may have legitimate concerns that the landlord has not been afforded an adequate opportunity to dispute the tenant's application.

In this case, conflicting sworn testimony was presented by the parties as to when the tenant's initial notice was provided to the landlord of his dispute resolution application and the hearing date. As the difference in dates is considerable and has a direct bearing on the landlord's assertion that the landlord's rights to a fair hearing have been prejudiced as the landlord has not been given adequate notice of this hearing, I find that careful attention must be placed on the method used by which notice of the tenant's application was provided.

Section 89(1) of the *Act* establishes the methods by which service of an application for dispute resolution such as this one can occur. Section 89(1) reads 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].

The dates of service of the dispute resolution hearing package can be confirmed by written documentation (as in the case of sending by registered mail) or through sworn affidavits or a witnesses' testimony at a hearing.

In this case, the tenant said that he served his dispute resolution hearing package and his evidence by depositing it in the mail slot of the landlord's resident building manager. I find that this method is not one that is set out in section 89(1) of the *Act*. Even though the landlord admitted receiving notice of this hearing and the tenant's written evidence package through this method of service delivery, I find that the date of this admitted service delivery was so close to the date of this hearing that the landlord is correct in asserting that her ability to respond to the tenant's claim has been prejudiced.

I find that the tenant has not served his dispute resolution hearing package, including his application for dispute resolution, to the landlord in a way permitted under section 89(1) of the *Act*. I dismiss the tenant's application with leave to reapply as I find that the tenant's failure to serve his application for dispute resolution to the landlord in a method prescribed under the *Act* has prejudiced the landlord's right to a fair hearing.

Conclusion

I dismiss the tenant's application with leave to reapply. If the tenant reapplies, he should serve his dispute resolution hearing package in accordance with the *Act*. In that

event, both parties would be required to make new submissions of any evidence they wish to be considered at the hearing to the Residential Tenancy Branch and to each other in accordance with the *Act*.

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 18, 2012

Residential Tenancy Branch