



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for unpaid rent pursuant to Section 67;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the filing fee pursuant to Section 72.

The notice of hearing dated November 27, 2008 was served on the tenant on November 28, 2008, by registered mail. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### **Issues to be decided**

- Is the landlord entitled to a monetary order to recover unpaid rent?
- Has the landlord met the landlord's burden of proof that loss was incurred due to the tenant's violation of the Act or tenancy agreement?
- Is the landlord entitled to retain the security deposit in satisfaction of this claim?
- Was the tenant properly served the notice of hearing?

### **Background and Evidence**

The landlord testified that the tenancy started on July 10, 2008 for a fixed term of six months and twenty days. The monthly rent was set at \$1050.00 due in advance on the first day of each month. At the start of the tenancy, the tenant paid a security deposit in the amount of \$525.00.

The landlord stated that while on vacation out of the Province, on October 06, 2008 the landlord received a voice mail message from the tenant stating that the tenant had to leave the country urgently due to a family matter and was ending the tenancy

immediately. The landlord returned on October 08, 2008 to find the apartment vacant. The landlord stated that the tenant did not provide the landlord with a forwarding address and the landlord was unable to contact the tenant at the tenant's contact number. The landlord served the tenant the notice of hearing by registered mail to the address of the place of work that the tenant had provided on the tenant's application to rent the apartment. The landlord stated that the tracking did not indicate who had signed for receipt of the package.

The landlord stated that the tenant put a stop payment on the rent cheque for October and is claiming \$1050.00 as unpaid rent for October 2008. The tenant is also claiming \$90.00 for cleaning costs and \$100.00 for strata move out fees.

### **Analysis**

Section 89 of the *Residential Tenancy Act* states that an application for dispute resolution, when required to be given to the tenant by the landlord must be given by sending a copy by registered mail to the address at which the person resides. In this case the landlord stated that the notice of hearing was sent to an address that was listed on the tenant's application as the tenant's work place due to the fact that the tenant had not left a forwarding address and was unavailable at the contact number provided by the tenant. The landlord did not apply for an order for substitute service of documents, pursuant to Section 71. I find that the notice of hearing has not been sufficiently served on the tenant for the purposes of *Residential Tenancy Act* and therefore I dismiss the landlord's application with leave to reapply.

### **Conclusion**

The landlord's application is dismissed with liberty to reapply. Liberty to reapply is not an extension of any applicable limitation period.

Dated January 14, 2009.

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Dispute Resolution Officer