

DECISION

Dispute Codes MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit and to recover the cost of the filing fee from the Tenant.

The Landlord appeared, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

The tenant did not make an appearance at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under Sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord advised that she did not conduct the service of the hearing package to Tenant that her son, who owns part of the house, looked after the paperwork, her son could not attend the hearing today, and the Landlord who did appear at the hearing today did not have any of the information pertaining to the service of the hearing documents to the Tenant.

Analysis

The purpose of service documents under the *Residential Tenancy Act* is to notify the person being served of their breach and notification of their rights under the *Act*. The Landlord is seeking a Monetary Order due to this breach; and so the Landlord has the burden of proving that the Tenant was served with all required documents in accordance with the *Residential Tenancy Act*.

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that each respondent was served as required under the Act. If served in person, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call.

As per the Landlord's testimony it was her son, the other Landlord, who served the Tenant with notice of dispute resolution and in his absence at the hearing, I find the applicant has failed to prove that service of the hearing package has been effected in accordance with the *Act*.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have no evidence to support that the service of documents has been effected in accordance with the *Act*, I dismiss the landlord's monetary claim, with leave to reapply.

The Landlord is advised to administer the Tenants' security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Landlord's application for a Monetary Order, 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: July 24, 2009.

Dispute Resolution Officer