

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

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

### Preliminary Issues

The Landlord's Agent testified that service of the hearing package was done in person by her brother to the Tenant when the Tenant was at his Mother's home. The Landlord's Agent could not provide testimony as to when or how the service was effected. The Landlord's Agent advised that her brother was not available to testify at this hearing.

The Landlord's Agent testified that her brother, another Agent to the Landlord, had told her that he saw the Tenant on June 1, 2009 at the rental unit, and that the Tenant returned the keys to the Agent's brother, thus ending the tenancy.

### Analysis

The Landlord's Agent could not testify for certain that she knew when and how service of the hearing package was given to the Tenant. The Landlord's Agent advised that the Tenant stays with his Mother when he is not staying elsewhere however the Landlord's Agent could not provide testimony in support of the address where the Tenant is permanently residing.

I note that the Landlord's Agent listed the rental unit address as the Tenant's address for service on the application for dispute resolution and that this application was not

completed until June 10, 2009, nine days after the Tenant relinquished possession of the rental unit.

In the absence of the Respondent Tenant the onus lies with the Landlord to prove that service was conducted as required under the Act. Section 3.3 of the *Residential Tenancy Branch Rules of Procedure* stipulate that the person who performed the service must provide testimony, either in person at the hearing or by sworn affidavit, to advise how and when service of the documents was conducted.

I find that I do not have enough evidence before me to prove that service was conducted in accordance of 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 found the Landlord has failed to prove that the service of documents has been effected in accordance with the *Act*, I dismiss the Landlord's claim, with leave to reapply.

#### Conclusion

**I HEREBY DISMISS** the Landlord's claim, 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: September 21, 2009.

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Dispute Resolution Officer