

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, for unpaid rent, to keep all the security deposit, for money owed for compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

### Preliminary Issues

The Landlord testified that the Tenant was served personally, in the presence of the Landlord's witness, with the notice of dispute resolution, however the Landlord could not determine the date or time the service occurred.

I attempted to dial the Landlord's Witness into the hearing however the Witness was not home at the time of my call.

### Analysis

The Landlord provided testimony that the hearing package was served personally to the Tenant in the presence of a witness. The Landlord could not testify for certain that he knew the date and time when the Notice of Dispute Resolution hearing package was served to the Tenant and the Landlord failed to provide written affidavits of service from his witness.

I find that the Landlord has failed to prove that service of the Notice of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy 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 service of documents not to

have been effected in accordance with the *Act*, I dismiss the Landlord's claim, with leave to reapply.

As the Landlord has not been successful with his application, I find that he is not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

**I HEREBY DISMISS** the Landlords' 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: November 25, 2009.

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Dispute Resolution Officer