

Decision

Dispute Codes:

<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MNR</u>	For unpaid Rent or Utilities
<u>MNSD</u>	To keep all or part of the security and pet damage deposit
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the *Act*), and an order to retain the security deposit in satisfaction of the claim. The landlord was in attendance. The tenant did not appear.

Preliminary Issue

The landlord testified that the tenancy began in October 2007, the tenant gave notice on June 11, 2009 to vacate at the end of June and the landlord applied on August 5, 2009 to keep the security deposit and monetary compensation for cleaning and damages. According to the landlord, on August 7, 2009 the landlord sent the hearing package by registered mail to an address that had been verbally communicated to the landlord by the tenant sometime in June or July 2009 after the tenancy had ended. The landlord testified that the landlord attempted to serve in person on August 7, 2009 and attended at the address given along with a witness. However, an individual known to the landlord as the tenant's boyfriend informed the landlord that the tenant did not live there and threatened the landlord with harm. The landlord testified that the information provided by the tenant's boyfriend was not believed, because of the information given the previous month by the tenant herself and because the tenant's vehicle was seen on the premises. The landlord explained that after this incident, the landlord then mailed the Notice of Hearing by registered mail to that same address.

Because the landlord was seeking a monetary order, and based on the testimony given by the landlord, I find that there is some doubt about whether or not the tenant was

properly served with this Application in compliance with Section 89 of the Act which states that an application for dispute resolution, when required to be served by the landlord to the tenant, must either be given directly to the person or sent by registered mail to the address at which the person resides or to a written forwarding address provided by the tenant. In this instance the Notice of Hearing was sent by registered mail to an address at which the landlord had been told that the tenant did not reside. I find that there is the possibility that the tenant never resided there or had resided at the property but had vacated since providing the verbal address.

The burden is on the Applicant to prove that the service was within the above provisions. As the landlord served the documents to an address that was not confirmed to be that of the tenant's current residence, I find that this would not meet the definition of service by registered mail to the "*address at which the person resides*" and is therefore not valid service under the Act.

Given the above, the matter under dispute cannot proceed because the landlord has not proven that the tenant was properly served and I therefore have no choice under the Act but to dismiss this application with leave to reapply at a later date should the landlord wish to do so, once a service address has been located for the respondents.

Conclusion

Based on evidence and testimony, I hereby dismiss this application with leave to reapply.

November 2009

Date of Decision

Dispute Resolution Officer