

DECISION

Dispute Codes OPR OPB MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession and a Monetary Order for damage to the unit, for unpaid rent, to keep all the security deposit, for money owed or 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 he served the Tenant with the Notice of Dispute Resolution, via registered mail on September 4, 2009, to an address that was listed on the Tenant's cheques which were used to pay the rent.

The Landlord confirmed that the Tenant has vacated the rental unit, that the Landlord does not know where the Tenant is currently living, and that the registered mail package with the Notice of Dispute Resolution documents, was returned to the Landlord and marked "undeliverable".

Analysis

The Landlord provided evidence that the hearing package, which was sent to the Tenant, was returned to the Landlord. The Landlord could not testify for certain that he knew that the address where the Notice of Dispute Resolution hearing package was mailed was in fact where the Tenant resided.

I find that service of the Notice of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act* which provides that service of the Notice

of Dispute Resolution, if sent via registered mail, must be sent to the address at which the person resides.

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 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: November 13, 2009.

Dispute Resolution Officer