



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

<u>MND</u>	Monetary Order for Damage to the Unit/Site/Property
<u>MNSD</u>	Keep All or Part of the Security Deposit
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was a re-hearing 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 partial satisfaction of the claim.

The landlord attended but the tenant did not.

Preliminary Issue

At the outset of the hearing the landlord testified that the hearing package had been served by registered mail to each respondent, but only the male respondent had picked up the mail. The landlord submitted proof of registered mail mailed on October 9, 2009. However, the landlord stated that in the original mailing the second page of the hearing notice had not been included and, according to the landlord, sometime near the end of November 2009, the landlord then sent the complete hearing package by registered mail, along with the landlord's evidence. However, the landlord was not able to provide documentary proof that the intact package and evidence was served in the second

mailing. No registered mail receipt had been submitted and no tracking number was available.

In regards to the serving of evidence, Residential Tenancy Rules of Procedure, Rule 3, requires that all evidence must be served on the respondent and the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

The receipt of the evidence by the respondent is a matter that will affect the landlord's ability to prove the claim. If copies of the evidence are not served as required, and if the evidence is relevant, the Dispute Resolution Officer must make a decision as to whether or not accepting the evidence would prejudice the other party, or would violate the principles of natural justice.

In the case before me, I find that the evidence in question was submitted to the Residential Tenancy Branch and added to this file on December 22, 2009 which would not be compliant with the Act. However, the applicant testified that the same evidence was actually served to the respondent earlier, near the end of November, 2009 and I find this was more than 5 days in advance of the hearing in compliance with the Act.

However, before this issue can be considered, I must first make a determination whether the complete Notice of Hearing Package was properly served on the respondent and, if so, when this occurred.

Section 59 states that an application for dispute resolution must be in the applicable approved form, include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and be accompanied by the fee prescribed in the regulations. A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

In this instance, I find that, the landlord was not able to provide sufficient verification of the manner and date of service. Moreover, I find that, even if the landlord had successfully proven service of the complete hearing package to the tenant via a second mailing sent by registered mail near the end of November 2009, this would not have complied with the three-day deadline imposed by section 59 of the Act.

Given the above, I find that the hearing cannot proceed and must be dismissed.

Conclusion

Accordingly, I hereby order that the landlord's application is dismissed with leave to reapply.

December 2009

Date of Decision

Dispute Resolution Officer