

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

According to the landlord, on August 28, 2009 the landlord sent the hearing package by registered mail to an address that the landlord had concluded was the tenant's address. According to the landlord, this was determined by virtue of the fact that they observed that the tenant's car was parked at the address and had also recognized the tenant's possessions when they looked through the window. The landlord explained that after they had confirmed to their satisfaction that this was where the tenant now lived, the landlord then mailed the Notice of Hearing by registered mail to that same address.

Based on the testimony given by the landlord, and because the applicant was seeking a monetary order, 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. This provision of the Act 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 believed was where the tenant currently resided. I find that there is the possibility that the tenant did not live at the location in question. I find that observing the car and checking the furnishings through a window is not sufficiently definitive to conclude that this was the tenant's current 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 independently 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.

December 2009

Date of Decision

Dispute Resolution Officer