

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep the security deposit and to recover the cost of the filing fee from the Tenant for this application.

Preliminary Issues

The Landlord testified that service of the hearing package was performed by the previous building manager and based on the notes the package was delivered to the Tenant's Parents at their rental unit in the same building. The Landlord stated that he could not say for certain if the Tenant's parents were handed the package or if the Tenant was personally served.

Analysis

The Landlord could not testify for certain that he knew that the Tenant was personally served with notice of the hearing package.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking to obtain a monetary order so the Landlord has the burden of proving that the Tenant was served with all required documents in accordance with the *Act*.

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that the respondent was served as required under the *Act*. If served in person, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call.

As per the Landlord's testimony it was the previous manager who served the Tenant the notice of dispute and in his absence at the hearing, I find the applicant has failed to prove service of the 10 Day Notice has been effected in accordance with the *Act*.

The landlord testified that the site manager served the notice of the notice of hearing, to the Tenant at the Tenant's Parents rental unit on September 18, 2009.

I find that the Landlord has failed to prove that service of the Notice of Hearing was effected in accordance with Section 89 of the *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 monetary 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: January 11, 2010.

Dispute Resolution Officer