



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, compensation for unpaid rent, damages and or loss, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord submitted evidence that on January 6, 2010, he was told by other occupants of this rooming house that the tenant had moved out. On January 6, 2010, the landlord attended at the rental unit and met with the tenant outside of the home. Effective January 5, 2010, the tenant had been served with a 10 Day Notice to End Tenancy for Unpaid Rent and he informed the landlord that he planned to pay the rent.

The landlord stated that on January 15, 2010 the tenant was served with copies of the Application for Dispute Resolution and Notice of Hearing by registered mail sent to the dispute address. A Canada Post tracking number was provided as evidence of service.

The landlord submitted a copy of the Canada Post web site tracking formation that indicated registered mail was returned as unclaimed. The landlord provided a copy of the envelope that was returned which has been marked, indicating that the recipient had moved. The landlord did not know who would have made this notation on the envelope, but believes one of the other occupants of the house may be responsible.

The landlord testified that he did not see the tenant at the rental unit again and that he did not enter the room until the end of January, at which time he determined that the tenant had moved out.

The landlord has claimed damages to the rental unit and provided evidence by way of a repair bill dated January 10, 2010, which was submitted to support repairs made to the rental unit door jam and walls. This evidence contradicted the landlord's testimony that there had not been any entry to the rental unit between January 6 and 31, 2010. The landlord explained that he had submitted the wrong bill as evidence, however, I was unable to safely rely upon the testimony which I found contradicted the evidence before

me. Therefore, I informed the landlord that I would consider the matter of service further and issue a written decision in relation to the matter of service.

I find that the tenant has not been sufficiently served with Notice of this hearing. I base this decision on the inconsistency between the landlord's testimony that he had not been in the rental room between January 6 and 31, 2010 and the submission of a repair bill which indicates that the doorjamb to the room was repaired on January 10, 2010. I am not confident that the tenant remained in the rental unit after January 6, 2010 and find that the notation on the envelope provided evidence that the tenant had moved.

This Application is dismissed with leave to reapply, at which time the landlord must ensure that the tenant is served with all required documents as required by sections 88 and 89 of the Act.

The landlord will continue to retain the deposit paid in trust and will disburse the deposit as required by section 38 of the Act.

Conclusion

In the absence of proof of service to the tenant at an address where the tenant resides, I find that this Application is dismissed 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: February 23, 2010.

Dispute Resolution Officer