

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

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

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

### Background and Evidence

The Landlord testified that the Tenant was served with the notice of dispute resolution via registered mail on November 26, 2009, almost two months after the tenancy ended.

The Landlord could not provide testimony to confirm that the address which the registered mail package was sent to was the address where the Tenant currently resides. The Landlord argued that the previous building manager provided her with the Tenant's address, as listed on the Landlord's application, and this building manager is not available to provide testimony as to how he determined this was the Tenant's address.

The Landlord's spouse then came on the line and stated that he knows the Tenant received the package.

### Analysis

The Landlord could not testify for certain that she knew that the address where the Notice of Dispute Resolution hearing package was mailed was where the Tenant resided. The Landlord stated that the address they used was an address the Landlord received from a previous building manager as the last known address of the Tenant.

In the absence of testimony from the building manager, who provided the Landlord with the address, I find that service of the Notice of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act* which states that service of 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 her application, I find that she 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: March 03, 2010.

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Dispute Resolution Officer