

DECISION

Dispute Codes

MND, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, a Monetary Order for damage to the rental unit and to recover the cost of the filing fee.

The landlord states that service of the hearing documents was done in accordance with section 89 of the *Act*. He testifies that the tenant was served at her place of work in person on November 21, 2009. The landlord did not provide a witness for this service but faxed a business card from a person at the tenants' place of work after the hearing. The landlord declared that the tenant was served in person however the business card states that a third party picked up the tenants envelope with the hearing package on November 19, 2009 at 10.55 am. As the landlord had not applied for a Substitute Service Order I can not conform from the landlords evidence that the tenant was served according to the section 89 of the Act.

Analysis

Section 89 of the Act states that hearing documents must be given in one of the following ways:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The landlords' evidence does not confirm his testimony that the tenant was served in person at her place of work. Consequently, I am unable to determine that the tenant was sufficiently served for the purposes of the Act.

Section 12 of the Residential tenancy Policy Guidelines states: Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply.

Conclusion

To find in favour of an application, 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. In the absence of proof that the tenant was serviced with the hearing documents in accordance with the section 89 of the *Act*, I dismiss the landlord's application 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 19, 2010.

Dispute Resolution Officer