

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's legal counsel only. The tenant did not attend.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 17, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

### Background and Evidence

At the outset of the hearing the landlord's legal counsel requested an order to accept service of the Notice of Hearing documents to be sufficient for the purposes of the *Act*.

Legal counsel testified the tenant abandoned the rental unit the landlord had found an address for the tenant's mother and sent the notice of hearing documents to that address clearly addressed to the tenant in care of the mother.

Counsel provided a copy of the Canada Post tracking print out for this delivery that shows the package had been signed for by a male (with a different surname than the tenant) and that the package was returned to the landlord.

Counsel also testified that the package, when returned, had been opened and taped back up prior to returning to the landlord, contending that this clearly showed the tenant did receive the package and when she saw what it was returned it to the landlord.

Legal counsel submitted, into evidence two judicial reviews on the matter of acceptable service for consideration. In the first review service was conducted on the landlord at the address provided by the landlord as the address that he carried on business. In the second review the landlord found the address used for service and provided evidence in the judicial review of intentional evasion of service on a prior occasion.

### Analysis

Upon review of the submitted judicial reviews, I find the first example regarding service on the landlord to not be relevant to this service. In that case the landlord himself had

provided the address to the tenants and therefore the tenants had no option but to rely on that address.

In this case the landlord has provided no evidence of the accuracy of the address for the tenant or her mother or how it was obtained; no evidence that the tenant did in fact receive the documents; or that it was the tenant who returned the package or any attempts, on the part of the tenant, to evade service.

As a result I do not accept that the tenant as been sufficiently served with the notice of this hearing.

I make no findings on the merit of the case itself, but I note that the landlord has applied under the *Manufactured Home Park Tenancy Act* to retain the security deposit, however, Section 17(2) of the *Act* states a landlord must not require or accept a security deposit in respect of a manufactured home site tenancy.

Section 17(3) notes that should a landlord accept a security deposit from a tenant, the tenant may deduct the amount of the security deposit from rent or otherwise recover that amount.

### Conclusion

As a result of my above findings on service, 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 *Manufactured Home Park Tenancy Act*.

Dated: July 14, 2010.

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Dispute Resolution Officer