

DECISION

Dispute Codes MNSD MNR MNDC MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep the security deposit, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenant for this application.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order in accordance with sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified that he served the Tenant with the hearing documents in person at the Tenant's residence. He initially stated that he did not know when he served the documents but that he drove to her new residence and handed the documents to the Tenant's husband. After further requests to clarify the date of service the Landlord stated that he served the documents on April 2, 2010.

Analysis

The Landlord provided evidence that the hearing package was personally served by himself to the Tenant's husband. Initially the Landlord could not provide the date the service was conducted and later stated the documents were served on April 2, 2010.

The Landlord has stated that he served hearing documents on April 2, 2010, however he did not file his on-line application until April 13, 2010 and the hearing package was not created until April 15, 2010. In the presence of the aforementioned contradiction I find that the Landlord has failed to prove that service of the Notice of Dispute Resolution hearing documents were effected in accordance with Section 89 of the *Residential Tenancy 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 insufficient evidence to support that the service of documents has 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 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: August 25, 2010.

Dispute Resolution Officer