



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to keep all or part of the security deposit and to recover the cost of the filing fee from the Tenant for this application.

Issues(s) to be Decided

1. Is the Landlord entitled to a Monetary Order to retain the security deposit?

Background and Evidence

The Agent for the Landlords attended and provided affirmed testimony. When asked how the hearing documents were served to the Tenant the Agent initially stated that they would have been sent to the Tenant by the *Residential Tenancy Branch*. When I advised that they were required to be served by the applicant, the Agent spoke with his mother, the Landlord, in their language to determine how the documents were served. He began by stating the documents were served by the Tenant in June 2010 because it was the Tenant's application for dispute resolution. The Agent confirmed there was a previous hearing based on the Tenant's application. I then informed the Agent that today's hearing was convened to hear the Landlord's application. He spoke with his mother again and advised, three separate times, that the hearing documents were served personally to the Tenant on July 06, 2010 at her new address, by his mother. When I advised the Agent I would be dismissing the application he questioned why the *Residential Tenancy Branch* did not send the Tenant a copy of the Notice of Hearing.

Analysis

The evidence supports the Landlord's application was received at the *Residential Tenancy Branch* on July 7, 2010, and the hearing documents were created on July 8, 2010. Therefore the Landlords could not have served the Tenant with the hearing documents on July 6, 2010, prior to when they were created. Therefore, in the absence of the Tenant, I find the Landlords have provided insufficient evidence to prove service to the Tenant was effected in accordance with the 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 the service of documents not to have been effected in accordance with the *Act*, I dismiss the Landlords' claim, with leave to reapply.

As the Landlords have not been successful with this application, I find that they are not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

I HEREBY DISMISS the Landlords' 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: November 23, 2010.

Dispute Resolution Officer