



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNR, MNDC, FF

Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the *Act*).

The landlord was in attendance. The tenant did not appear.

Preliminary Issue

The landlord testified that the tenancy began on November 1, 2005 and ended on October 31, 2010 and the tenant left owing rent and other debts to the landlord.

According to the landlord, on October 21, 2010 the landlord posted the Notice of Hearing package on the tenant's door.

Because the landlord was seeking a monetary order, and based on the testimony given by the landlord, I find that posting the notice was not acceptable service. Section 89 of the Act states that an application for dispute resolution, when required to be served by the landlord to the tenant, must either be given directly to the person or sent by registered mail to the address at which the person resides or to a written forwarding address provided by the tenant.

However, on October 27, 2010 the landlord had also sent the hearing package by registered mail, addressed to the tenant at the subject address and the applicant provided a Canada Post receipt to confirm service by registered mail.

Section 90 of the Residential Tenancy Act determines that a document sent by registered mail is deemed to have been served in 5 days.

In this instance I find that the service date for the Notice of Hearing sent by registered mail was deemed to be November 1, 2010. As the tenant had vacated the unit prior to

that date, I find that the documents were served to an address where the tenant no longer resided.

The burden is on the Applicant to prove that the service was within the above provisions. As the landlord served the documents to an address that was not the tenant's current residence, I find that the mailing of the package would not meet the definition of service by registered mail to the "*address at which the person resides*". I find that there was no valid service of the hearing package in compliance with the Act.

Given the above, I find that the matter under dispute cannot proceed because the landlord has not proven that the tenant was properly served. Accordingly, I dismiss this application with leave to reapply at a later date should the landlord wish to do so, once a service address has been located for the respondent.

Conclusion

Based on evidence and testimony, I hereby dismiss this 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: February 2011.

Residential Tenancy Branch