



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNDC, MNR, MNSD, 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*), and an order to retain the security deposit in satisfaction of the claim.

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

Preliminary Issue

The landlord testified that on October 27, 2010 the landlord sent the hearing package by registered mail to the address given by the tenant on his application for tenancy as the contact, "next of kin". The landlord submitted a registered mail tracking slip to confirm that the package was mailed. The landlord stated that the address used was believed to be the tenant's forwarding address as he had told people he was returning to Ontario. However, the tenant had never provided any communication in writing with regard to his forwarding address.

Because the landlord was seeking a monetary order, and based on the testimony given by the landlord, I find that the tenant was not properly served with this Application in compliance with Section 89 of the Act which 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.

In this instance the Notice of Hearing was sent by registered mail to an Ontario address identified as the tenant's "next of kin" on his application for tenancy. The landlord could not provide any independent confirmation that this constitutes the address where the tenant is currently residing.

The burden is on the applicant to prove that the service was compliant with the service provisions in the Act and regulations.

I find that because the landlord served the documents to an address that was not confirmed to be that of the tenant's current residence, this would not meet the definition of service by registered mail to the "*address at which the person resides*". I find that this is therefore not valid service under 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 and I therefore have no choice under the Act but to dismiss this application with leave to reapply at a later date should the landlord wish to do so, once the residential service address has been located for the respondent.

No findings were otherwise made with respect to this dispute nor the merit of the application.

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: March 2011.

Residential Tenancy Branch