



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Issues(s) to be Decided

Has the landlord served his application for dispute resolution to the tenant in accordance with the *Act*? If so, is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord said that this periodic tenancy began on approximately June 1, 2006 and ended when the tenant vacated the rental unit by July 18, 2010. Monthly rent by the end of this tenancy was set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$550.00 security deposit paid on approximately May 23, 2006.

The landlord applied for a monetary award of \$9,200.00 for unpaid rent arising out of this tenancy.

Background and Evidence - Service of Landlord's Application

The landlord testified that he served the tenant with his dispute resolution package by sending it by registered mail to the tenant's daughter's residence. He said that the

tenant told him that she was planning to move in with her daughter when she ended this tenancy in July 2010. He provided a Canada Post Tracking Number and Canada Post Customer Receipt to confirm his mailing of this package. He said that he has not received the tenant's forwarding address in writing and does not know if she is still living with her daughter. He said that he knew where the tenant's daughter lives and believes that she would have forwarded it to the tenant if her mother was no longer living at that address. He said that he assumed that the dispute resolution hearing package had been received by the tenant as it had not been returned to him by Canada Post. He said that he also knew where the tenant worked but has not attempted to serve the package to her at that location.

Analysis – Service of Tenant's Application

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Based on the sworn testimony provided by the landlord, I am not satisfied that he has served the tenant in accordance with the *Act*. He testified that he has not received a forwarding address from the tenant, but mailed it to her daughter's address. He also said that he did not know if the tenant continues to reside with her daughter. He offered no evidence to confirm that the tenant was aware of this hearing.

I find that the landlord has not served the tenant in a manner required by section 89(1) of the *Act*. I am not satisfied that the tenant was properly served with the landlord's application for dispute resolution.

Conclusion

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 *Residential Tenancy Act*.

Dated: November 09, 2011

Residential Tenancy Branch