



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The tenant did not appear.

Preliminary Matter

The landlord made application and, on September 21, 2011, received the Notices of Hearing documents that had to be served on the other party. The landlord testified that the Notice of Hearing was sent by registered mail on September 20, 2011 but this mail was returned. The landlord provided a tracking record to confirm that the registered mail was sent on September 20, 2011, remained unclaimed and was therefore returned to sender.

The landlord testified that the Notice of Hearing was later sent using a courier who put the mail through the tenant's mail slot when she did not answer the door.

Sections 88 and 89 of the Act determine the method of service for documents.

Because the landlord had applied for a Monetary Order under section 67 of the Act, there is a mandatory requirement that the landlord serve the tenant as set out under Section 89(1) of the Act. This section states that the landlord must serve in one of the following ways:

(a) by leaving a copy with the person, (personal service);

(c) by sending a copy by registered mail to the address at which the person resides

Although I do accept that the evidence confirmed service by registered mail through a Canada Post tracking number, I find it is not possible that the Notice of Hearing had been sent to the tenant in the registered package sent on September 20, 2011, because the documents were not actually issued by the Residential Tenancy Branch until

September 21, 2011. With respect to the subsequent delivery by courier through the tenant's mail slot, I find that this method of service did not comply with the Act.

Having found that the landlord has failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution in compliance with the Act, I find that the landlord's application must be dismissed with leave to reapply.

Conclusion

The landlord's application is hereby dismissed 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: December 07, 2011.

Residential Tenancy Branch