



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Issue(s) to be Decided

1. Has service of the Landlord's application for dispute resolution been served to the Tenant in accordance with section 89 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord's Agent appeared at the hearing and advised he was not sure which date the Tenant vacated the property. When asked how the Tenant was served with Notice of the Landlord's application, the Agent first stated the application was posted to the Tenant's door, then he stated it was posted to the door on July 1, 2011, and then I asked who did the service the Agent advised it was the Landlord. When I began to explain service requirements for a monetary order the Agent attempted to change his testimony to say the Landlord served the Tenant personally but that he did not know the date.

Analysis

The purpose of service of documents under the *Residential Tenancy Act* is to notify the person being served of their breach and notification of their rights under the Act in response. The Landlord is seeking to obtain a monetary order as a result of this breach; and so the Landlord has the burden of proving that the Tenant was served with all required documents in accordance with the *Residential Tenancy Act*.

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the applicant must prove to the Dispute

Resolution Officer that each respondent was served as required under the Act. If served in person, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call.

As the Agent was not able to provide testimony pertaining to how the Landlord served the Tenant with the hearing documents and copies of his application for dispute resolution, and in the absence of the Tenant at the hearing, I find the applicant has failed to prove service has been 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 cannot find that the service of documents has been effected in accordance with the *Act*, I dismiss the Landlord's monetary claim, with leave to reapply.

Conclusion

I HERBY DISMISS the Landlord's 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: December 14, 2011.

Residential Tenancy Branch