Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MND, MNSD, FF

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the unit site or property and the filing fee, and an order to keep all or part of the security deposit.

The Landlord provided affirmed testimony that he served the Tenant, with the Application for Dispute Resolution and Notice of Hearing on October 19, 2011, by sending these by registered mail to an address in the United States where he believes the Tenant may be receiving mail.

The Tenant did not participate in the conference call hearing.

The Landlord stated that when the Tenant vacated the rental unit in 2011, it was left in poor condition as she had a dog in the suite and the Landlord had to undertake repairs and painting before new tenants could move in. The Landlord stated that the Tenant did not provide him a forwarding address, and he has been trying to communicate with the Tenant by email and text he has not been successful. The Landlord stated that the Tenant is uncommunicative and they are not sure where she currently resides. The Landlord stated that the Tenant had a fiancé or boyfriend who lived with her and that his name was added to the tenancy agreement. The Landlord did not provide the tenancy agreement as evidence. The Landlord stated that his Application is only against the Tenant TF as the fiancé/boyfriend refuses to provide his address to the Landlord, even though he resides in Canada. The Landlord stated that the Tenant's finance or boyfriend has texted or emailed them a United States address where he thinks the Tenant's mail can be sent to. The Landlord did not provide a copy of the text or email he received from the fiancé/boyfriend in evidence. The Landlord stated that he sent the Notice of Hearing and Application to the Tenant by registered mail to the United States address provided by her fiancé/boyfriend.

The Notice of Hearing and Application for Dispute Resolution package were made available to the Landlord on October 18, 2011. Section 59(3) of the Residential Tenancy Act, the "Act", requires that the applicant serve the respondent with the Application, which includes the Notice of Hearing, within three days. Section 89 of the Act, provides specific rules for the service of the Application for dispute resolution package. Section 89 states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents]*.

The Landlord is unsure where the Tenant is residing and the Tenant has not provided a forwarding address to the Landlord. The Landlord served the Application and Notice by sending it by registered mail to an address that was allegedly provided by the Tenant's finance/boyfriend, however no evidence has been provided to show that the Tenant actually has requested that the Landlord send her mail there. Thus I find that the Landlord failed to serve these documents in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Landlord's Application is 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: January 17, 2012.

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Residential Tenancy Branch