



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent or utilities; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord was asked twice about service of the hearing documents upon the tenant. Both times the landlord stated the tenant was served with the hearing documents, including the Notice of Hearing, on January 20, 2012. I asked the landlord if the tenant still resided in the rental unit to which the landlord responded the tenant had moved out at the end of January 2012 pursuant to an Order of Possession he obtained in a previous proceeding. I asked for the file number for that proceeding which the landlord provided.

When I pointed out that the Notice of Hearing was generated by the Residential Tenancy Branch on January 23, 2012 the landlord responded by stating he had a difficult time hearing me. I did not accept that the landlord had any significant difficulty hearing me as he had answered several questions before he made this statement and did not ask me to repeat any questions.

The landlord also stated he had a witness statement as to service but acknowledged he had not provided it to the Branch before the hearing and did not have it in front of him during the hearing. The landlord offered to bring a witness statement to me after the teleconference call ended. I informed the landlord that I would not accept evidence after the teleconference call ended.

Where the respondent does not appear at a hearing, the applicant must be prepared to prove service. If service is done personally, the person who served the documents must appear at the hearing and be able provide: the date and time of service and where service occurred. If personal service was witnessed the witness should appear at the hearing or provide a sworn affidavit or statutory declaration. Such documentary evidence is required to be submitted before the hearing in accordance with the Rules of Procedure.

As the Notice of Hearing was generated on January 23, 2012 and the landlord's only proof of service was verbal testimony that he served the tenant on January 20, 2012 I found that I was not satisfied that the tenant was served with all of the required hearing documents. Accordingly, I dismissed the 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 06, 2012.

Residential Tenancy Branch