



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was to deal with an application by the tenant for the return of double the security deposit and other monetary claims. The hearing was also to deal with a cross application by the landlord for a monetary order for rent and damages and an order to retain the security deposit in partial satisfaction of the claim.

A hearing was held on December 3, 2012 and only the tenant attended. The tenant was successful and had been granted a monetary order against the landlord. However, the landlord subsequently made an application for a Review Consideration and a new hearing was granted.

Only the landlord appeared for the re-hearing held today.

Preliminary Issue

The tenant did not appear. As directed in the Review Consideration decision, the landlord was required to serve the tenant with the Notice of Review Hearing. The landlord did not offer evidence that the Notice of the Review Hearing was served on the tenant.

Section 89 of the Act states that an application for dispute resolution, when required to be served by the landlord to the tenant, must either be given directly to the person or sent by registered mail to the address at which the person resides or to a written forwarding address provided by the tenant.

The burden of proof is on the applicant to prove that the service was within the above provisions. I find that the landlord, who was present at the hearing, did not provide first-hand testimony regarding the service of the documents to the respondent and no evidentiary documents relating to service were submitted. Accordingly, I find that the landlord failed to meet the burden of proof to show that the tenant was properly served under the Act.

Given the above, I find that the matter under dispute cannot proceed because the landlord has not proven that the tenant was properly served and I therefore have no choice under the Act but to dismiss the landlord's and the tenant's application with leave to reapply at a later date, should they wish to do so.

Conclusion

Based on evidence, I hereby dismiss both the tenant's and the landlord's applications, 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: February 05, 2013

Residential Tenancy Branch