



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, SS, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application to retain the security deposit, for substitute service and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that the tenancy ended on February 28, 2013 and that a written forwarding address was provided on the same date. The tenants did not remove all of their belongings until mid-March, 2013 and on March 14, 2013 the landlord applied requesting to retain the \$1,200.00 deposit.

The landlord said he had permission to retain \$800.00 of the deposit and that he applied to retain the balance, as the fifteen day time limit to claim had been approaching.

The landlord did not wish to apply requesting substitute service.

The landlord served each of the tenants with Notice of the hearing, sent via registered mail, on March 21, 2013. The Notice of hearing packages were placed in 1 envelope and mailed together. During the hearing the landlord checked the Canada Post web site but was unable to determine which of the 2 tenants signed accepting the mail. The

signature had been archived by Canada Post; the landlord said the delay in obtaining a hearing date resulted in the service information becoming unavailable.

Section 3.1 of the Residential Tenancy Branch Rules of Procedure requires an applicant to serve each respondent with a copy of the Application for dispute Resolution. As I could not determine which of the 2 tenants had signed accepting the registered mail I found that service could not be proven. I could not arbitrarily select 1 of the tenants as having received a copy of the Notice of hearing, nor could I assume that perhaps both had received the registered mail.

Therefore, in the absence of service proven to a specific tenant I found that the application would be dismissed with leave to reapply.

The landlord said that he only wanted return of the filing fee, as he had applied within the required time-frame in anticipation of a possible claim against the balance of the deposit he has held.

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: May 30, 2013

Residential Tenancy Branch