



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, MNSD

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking a monetary order for damage or loss under the Act stemming from an unlawful eviction by the landlord. The claim included compensation for loss of property, return of double the security deposit and one month compensation for the Notice to End Tenancy for Landlord Use.

The tenant appeared but the landlord did not.

Preliminary Matter

The tenant testified that they attempted to serve the landlord personally and went to the location where the landlord carried on business to serve the hearing documents. This service was carried out by the Tenant's sister, who was not at the hearing to give first-hand testimony. The tenant testified that the hearing package was apparently intercepted by a receptionist who promised to give the mail to the landlord.

Section 59 of the Act states that an application for dispute resolution must be in the approved form, include full particulars of the dispute that are the subject of the dispute resolution proceedings. A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it. (my emphasis)

Sections 88 and 89 of the Act determine the method of service for documents. The tenant has applied for a Monetary Order under section 38 and 67 of the Act which requires that the landlord serve the tenant as set out under Section 89(1). This requires service in one of the following ways: (*My emphasis*)

(a) **by leaving a copy with the person, (personal service);**

- (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*].

In this case the tenant testified that an individual, acting on behalf of the tenant, had served the Notice of Hearing documents to the respondent "in person".

The individual who had served the package was not present to testify at the hearing. In addition, I find that the hearing package was actually delivered to a third party, not personally served directly to the landlord, as required under section 89 of the Act. I find that the tenant did not submit any evidence to prove, the identity of the person who accepted the documents nor to confirm that this person, who accepted the package, did so on behalf of the landlord, in the capacity of an agent of the landlord.

Having found that the tenant failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution in compliance with the Act, I have determined that the tenant's application for monetary compensation be dismissed with leave to reapply.

Conclusion

The tenant's application cannot proceed due to inadequate proof of valid service of the hearing package to the respondent. The 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: May 29, 2013

Residential Tenancy Branch

