



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

Issue(s) to be Decided:

Is the Landlord entitled to a monetary Order for unpaid rent and to keep all or part of the security deposit?

Background and Evidence:

The Landlord attended the hearing but the Tenant was not represented at the hearing.

The Landlord stated that the Application for Dispute Resolution and Notice of Hearing were mailed to the service address on the Application, via registered mail, on June 21, 2013. He stated that the Tenant provided this service address prior to the start of the tenancy and that he understands it is the Tenant's mother's address. He stated that he drove past that address prior to mailing these documents and that he observed the Tenant's vehicle at the address, which makes him believe the Tenant is living at that address.

The Landlord submitted a printout from the Canada Post website that shows the mail was delivered on June 25, 2013. The "signatory name" on the document is the name of the Tenant but the mail was signed for by a person with the same surname but with the first name of "Angus". The Landlord stated that he has never known the Tenant to use the first name "Angus" but he speculates it was signed for by the Tenant.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a tenant is to notify the tenant that a dispute resolution proceeding has been initiated and to give the tenant the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenant was not personally served with the Application for Dispute Resolution and the Notice of Hearing. I therefore cannot conclude that he was served pursuant to section 89(1)(a) of the *Act*.

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Application for Dispute Resolution and the Notice of Hearing were mailed to the service address on the Application, which is the Tenant's mother's address. I find that I have insufficient evidence to conclude that the Tenant is living at that address. Although I accept that the Landlord has observed the Tenant's vehicle at the address, I find that it is possible that the Tenant was just visiting on that occasion or that the Tenant has left his vehicle at that address for a variety of possible reasons. I therefore cannot conclude that he was served pursuant to section 89(1)(c) of the *Act*.

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Application for Dispute Resolution and the Notice of Hearing was not mailed to a forwarding address provided by the Tenant at the end of the tenancy. I therefore cannot conclude that he was served pursuant to section 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) of the *Act*.

I find that the Landlord submitted insufficient evidence to show that the Tenant received the Application for Dispute Resolution. While I accept that the Canada Post

documentation shows that the package was signed for by an individual with the same surname as the Tenant, the signature clearly shows that the first name of the signature is different than the first name of the Tenant. I find it entirely possible that the package was received by a relative of the Tenant. As I have no evidence that the relative has forwarded the package to the Tenant, I cannot conclude that it was served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the Tenant was served with the Application for Dispute Resolution, I find that I am unable to determine the matter in the absence of the Tenant.

Conclusion

The Landlord's Application for Dispute Resolution 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: September 19, 2013

Residential Tenancy Branch

