



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 17, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the pet and or security deposits; for money owed or compensation for damage or loss under the act, regulation or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord and her Agent appeared at the scheduled teleconference hearing and provided affirmed testimony.

Issue(s) to be Decided

Has the Landlord proven service of the application for dispute resolution and hearing documents in accordance with section 89 of the Act?

Background and Evidence

At the outset of the proceeding the Landlord and her Agent testified that the other Landlord, M.C. personally served the Tenant with the notice of dispute resolution hearing documents. They stated that M.C. was not able to attend the hearing because he was out of town on business.

The Landlord and Agent were scrambling to find the information pertaining to which date the Tenant was served with the required documents. I granted the Landlord and Agent time to search for the information, during which they began to say random dates which they found on different pieces of papers. They began by stating service was July 9, 2013, and then argued that the service was conducted on the same date they picked up the documents. Neither party knew which date the documents were picked up. After

eleven minutes of searching I informed the Landlord and her Agent that I could not proceed with their application because the person who conducted the service was not in attendance at the hearing and because there was no signed proof of service document on file.

Analysis

Section 89(1) of the Act stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (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*].

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the application must prove to the Arbitrator that the respondent was served as required under the Act. If served in person, the person who served the documents must either attend the dispute resolution proceeding, either in-person or by conference call, or provide a written affidavit of service.

As per the Landlord's testimony it was the other Landlord, M.C. who personally served the Tenant with the application for dispute resolution and hearing documents. M.C. did not attend the hearing and did not provide a written affidavit of service. Neither the Landlord nor her Agent could provide accurate testimony as to when service was conducted. Accordingly, I find the applicant has provided insufficient evidence to prove the respondent Tenant was served notice of this proceeding in accordance with the *Act*.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. Accordingly, I dismiss the Landlord's claim, with leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's claim, 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: October 22, 2013

Residential Tenancy Branch

