



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPC, OPB, MND, FF

Introduction and Preliminary Matter

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for alleged damage to the rental unit, an order of possession for the rental unit due to alleged cause and due to an alleged breach by the tenant of an agreement with the landlord, for authority to retain the tenant's security deposit, and to recover the filing fee.

The landlord attended; the tenant did not attend the telephone conference call hearing.

At the outset of the hearing, the landlord was not certain of the date he served the tenant with his application and notice of hearing. The landlord provided several dates upon which he served his application, but primarily listed the date as August 1, 2014. The landlord's application, however, was made on August 27, 2014. After numerous attempts at guessing the date, the landlord finally stated he served the tenant via personal delivery on August 27, 2014. It must be noted that the Notice of Dispute Resolution Hearing letter, informing the participants of the time and date of this hearing, was dated August 28, 2014, which led me to question that the tenant was actually served on August 27, 2014.

Preliminary matter-The landlord submitted that the tenant had vacated the rental unit by September 4, 2014, and no longer required an order of possession for the rental unit.

Analysis and Conclusion

Section 89(1) of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

In the case before me I find that the landlord failed to provide convincing evidence of the date and method in which he served the tenant with his application and notice of hearing due to his hesitant and conflicting testimony.

Additionally, at the time the landlord filed his application, his request to retain the tenant's security deposit was premature, as the tenancy had not yet ended.

I therefore find the landlord submitted insufficient evidence that he served the tenant his application for dispute resolution and notice of this hearing in a manner required by the *Act* and as a result, I dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

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, 2014

Residential Tenancy Branch

