



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was originally scheduled for October 14, 2014 to deal with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the security deposit. The tenant did not appear at the scheduled hearings.

At the time of filing, the landlord had applied for substituted service and an ex-parte hearing was held with the landlord to consider this request.. The Arbitrator considering the Application for Substituted Service denied the landlord's request to serve documents upon the tenant's former outreach worker; however, the Arbitrator was satisfied by the evidence before him that the tenant would likely receive the documents that were emailed to her daughter. As a result, the Arbitrator provided specific instructions to the landlord with respect to information and documentation to be sent to the tenant's daughter by email.

The landlord provided evidence that he followed the Arbitrator's instructions and included an email that the tenant's daughter sent in response. The email written by the tenant's daughter on June 9, 2014 states:

"I am not involved in any way with [name of tenant] finances or the supposed move.

Please refer to her worker [name of worker] and remove me from your list.

All further emails from you will be marked as spam and I will not receive them."

Although the landlord followed the substituted service orders given by the Arbitrator, those orders were made pursuant to an ex-parte hearing where only the landlord's submissions were considered. Whereas, I had the benefit of considering the response that was received from the tenant's daughter in determining whether the tenant likely received the hearing documents. Considering the email written by the tenant's daughter on June 9, 2014 I found there was no indication that the tenant's daughter forwarded

the information to the tenant. In keeping with the principles of natural justice, which provide that every respondent has the right to be notified of the claims against them and an opportunity to respond, I was unsatisfied the tenant had been notified of the hearing or the claims against her.

In light of my findings above, the landlord requested the hearing be adjourned so that he may attempt to serve the tenant either personally or by registered mail. The landlord's request for adjournment was granted as the landlord had complied with previous orders given by an Arbitrator. I instructed the landlord to provide me with proof of service prior to the reconvened hearing.

I did not receive any proof of service during the period of adjournment and at the reconvened hearing of November 26, 2014 only the landlord appeared. The landlord testified that he had been suffering from health issues since the last hearing and had not made any attempt to locate and serve the tenant. The landlord requested another adjournment so that he may serve the tenant.

I declined to adjourn the matter again as I was unsatisfied that to do so would likely result in service upon the tenant given the landlord's lack of progress during the period of adjournment already granted. Therefore, I dismissed the landlord's Application for Dispute Resolution with leave to reapply.

The landlord remains at liberty to file another Application for Dispute Resolution within two years of the date the tenancy ended.

Conclusion

The landlord's application was 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: November 26, 2014

