



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenant did not attend this hearing. The landlord attended the hearing.

Preliminary Issue – Scope of Application

This tenancy was the subject of an earlier application by the landlord. That application was heard 18 March 2015 and a decision was issued 20 March 2015. That decision granted the relief requested by the landlord.

Unfortunately, the landlord spelled the tenant's name incorrectly in her application. The tenant could have sought an amendment at the hearing, but none was requested. Now the previous arbitrator is *functus officio* and could not grant an amendment to the application. *Functus officio* is a doctrine that prevents the reopening of final decisions. As the typographical error was in the application and not the decision or order, the name change could not be dealt with by way of correction pursuant to section 78 of the Act.

The decision and order dated 20 March 2015 were issued in respect of a person that does not exist for the purpose of this tenancy. Accordingly, I find that the prior decision and orders of the Residential Tenancy Branch dated 20 March 2015 are nullities on the basis that the tenant's name on the application was misspelled. On the basis that there is no determination on this matter, I find that I am not prevented by the doctrine of *res judicata* from considering the landlord's application.

Preliminary Issue – Service of Dispute Resolution Package

The landlord testified that she served the tenant with the dispute resolution package on by posting the package to the tenant's door. The tenant did not appear.

Service of the dispute resolution package in an application for a monetary order must be carried out in accordance with subsection 89(1) of the Act:

- (1) An application for dispute resolution ... 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;...
 - (c) by sending a copy by registered mail to the address at which the person resides ...;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...

Posting the package to the door does not meet the service requirements of subsection 89(1) of the Act. The tenant did not appear. On the basis of the ineffective service of the dispute resolution package for the purposes of subsection 89(1) of the Act, the landlord's application for a monetary order is dismissed with leave to reapply. Leave to reapply is not an extension of any relevant time limit.

The landlord was informed of this determination at the hearing.

Conclusion

The landlord's 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 subsection 9.1(1) of the Act.

Dated: June 17, 2015

Residential Tenancy Branch

