



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit or pet damage deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Application for Dispute Resolution (the "Application") were considered. The agent testified that an attempt to serve the Notice of Hearing and Application package was made personally on the tenant on June 9, 2015 at approximately 9:30 p.m. at the rental unit, and that the landlord was present with the agent. The agent testified that when they attempted to give the tenant the package, she did not accept the package so the landlords kept the package with them and still have the package as of the date of this hearing. The agent confirmed that the package was not left near the tenant.

Residential Tenancy Branch Policy Guideline #12 – Service Provisions, states that when personally leaving a copy of the document with the person to be served, if the person declines to take a copy of the document, it may be left near the person so long as the person serving informs the person being served of the nature of the documents being left near them. Based on the above, I find the tenant has not been sufficiently served with the Notice of Hearing and Application as the landlord and agent failed to leave the documents near the tenant having retained the package themselves.

Both parties have the right to a fair hearing. The tenant would not be aware of the hearing without having received the Notice of Hearing and Application. Therefore, I

dismiss the landlord's application **with leave to reapply** as I am not satisfied that the tenant has been sufficiently served with the Notice of Hearing and Application. I note this decision does not extend any applicable time limits under the *Act*.

At the outset of the hearing, the agent testified under oath that the tenant vacated the rental unit on July 13, 2015 and as a result, the landlord no longer required an order of possession.

Conclusion

The landlord's application is dismissed with leave to reapply due to a service issue.

This decision does not extend any applicable time limits under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 21, 2015

Residential Tenancy Branch

