



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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.

Preliminary Issue – Service

The tenant did not attend this hearing, although I waited until 1414 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord attended the hearing.

Service of the dispute resolution package in an application such as the landlord's must be carried out in accordance with subsection 89(1) of the Act:

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 or, ...;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...

The tenancy ended in the first week of June. The tenant did not provide a forwarding address.

The landlord applied for dispute resolution on 17 July 2015. The Notice of a Dispute Resolution Hearing was prepared on 22 July 2015. The landlord testified that on 23 July 2015 he served the tenant by registered mail. The landlord submitted that the tenant resided at the address that the landlord used for service.

The landlord argued that the tenant resided at the address because it was the tenant's grandmother's home, the tenant's cousin resided there, he saw the tenant's car outside the home on one occasion, the landlord saw the tenant with his cousin in the town, and an acquaintance told the landlord that the tenant was staying there in late May or early June. The landlord testified that he spoke to the tenant's cousin and he denied that the tenant was living there. The landlord testified that in late June or as late as 7 July 2014, he attempted to serve the notice of hearing in person. The landlord testified that at this time the tenant had returned from a location in Alberta. The landlord testified that the tenant threw the papers on the ground.

On the basis of the evidence provided to me by the landlord, I am unable to find that the landlord has shown on a balance of probabilities that the tenant resides at that address. Whether or not the tenant's car was present at the rental unit is equivocal as he has family members that reside at that address. Further, given that the acquaintance said that the tenant was living at the grandmother's home at some point shortly after the tenancy, but before the tenant left for Alberta, it cannot be said that the stay was anything more than temporary. Without more evidence, I am not satisfied that this address is an appropriate address for service on the tenant. On this basis, the landlord has not completed service pursuant to paragraph 89(1)(c) of the Act.

The landlord's personal service in late June or early July could not have been in respect of this application. The documents that the landlord was required to serve were not in existence at that time. The earliest possible date the landlord could have served the tenant with the necessary documents was 22 July 2015. On this basis, the landlord has not completed service pursuant to paragraph 89(1)(a) of the Act.

As the tenant did not provide a forwarding address, the landlord could not serve pursuant to paragraph 89(1)(d) of the Act.

As the landlord has not proven that the tenant has been provided with proper notice of this hearing, I cannot proceed with the landlord's application. On this basis, the landlord's application is dismissed with leave to reapply.

The landlord may wish to consider the following information in any future application:

- Section 39 of the Act
- Subsection 60(1) of the Act
- Section 71 of the Act
- *Residential Tenancy Policy Guideline*, “12. Service Provisions”
- *Residential Tenancy Policy Guideline*, “17. Security Deposit and Set off”

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 section 9.1(1) of the Act.

Dated: January 11, 2016

Residential Tenancy Branch

