



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 13, 2015. The Landlord filed seeking a Monetary Order for: damage to the unit, site, or property; money owed or compensation for damage or loss under the *Act*, Regulation and/or tenancy agreement; unpaid rent and/or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenants.

The hearing was conducted via teleconference and was attended by the Landlord's Agent, hereinafter referred to as Landlord. No one appeared on behalf of the Tenants.

Issue(s) to be Decided

Have the Tenants been served Notice of the Landlord's Application and Hearing documents in accordance with the *Act*?

Evidence and Analysis

Section 89 of the *Act* stipulates as follows:

- (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
 - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of*

possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

In the absence of the respondent Tenants, the burden of proof of service of the Application and hearing documents lies with the applicant Landlord. The Landlord provided affirmed testimony that each Tenant was served with a copy of their Application for Dispute Resolution and the Notice of Hearing documents on July 21, 2015 when the packages were left with an adult who resides with the Tenants.

The Landlord's application pertained to a request for monetary compensation. Therefore, the Landlord was required to serve each Tenant with their Application and Notice of Hearing Documents in a manner stipulated by section 89 (1) of the *Act*, which does not provide for service by leaving the documents with an Adult who resides with the Tenants. Accordingly, I find the Tenants have not been properly served notice of this Application and Hearing Documents.

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with section 89(1) of the *Act*, I dismiss the Landlord's claim, with leave to reapply.

Conclusion

The Landlord was found not to have served their Application and hearing documents in accordance with the *Act* and their 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: February 11, 2016

Residential Tenancy Branch

