



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for the cost of cleaning and repairs, unpaid rent and the filing fee.

This hearing was first scheduled for September 25, 2015. The landlord served the notice of hearing and evidence package by registered mail to the tenant at an address that he obtained from the Small Claims Court. The tenant did not attend the hearing and a review of the tracking number indicated that the package "*cannot be delivered as addressed*"

The hearing was adjourned in order to give the landlord an opportunity to obtain the address or apply for substitute service. On October 29, 2015, the landlord applied to serve the notice of hearing on the tenant at the address of the tenant's sister. The landlord was granted substitute service on condition that the landlord provided an affidavit from the tenant's sister that the package was delivered to the tenant, in the presence of a witness. The landlord mailed the package by registered mail and provided proof that the package was received by the tenant's sister. However the landlord did not provide an affidavit from the tenant's sister confirming that the tenant was served with the package.

Since the landlord had not proven service of the hearing package to the tenant, the hearing was adjourned to this date – March 09, 2016 in order to give the landlord an opportunity to obtain the address or use the services of a process server.

The landlord attended the hearing and informed me that he was unable to locate the whereabouts of the tenant. He stated that he spoke with the Sheriff's office and will continue his attempts to find the place of residence or the mailing address of the tenant.

Analysis

Section 88 of the *Residential Tenancy Act* addresses how to give or serve documents. The purpose of serving a notice of hearing under the Legislation is to notify the person being served of matters relating to arbitration. The tenant is entitled to have an opportunity to be heard at the hearing. Based on the testimony of the landlord, I am not satisfied that the notice of hearing was served in accordance with section 88 of the *Act*.

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 *Residential Tenancy Act*.

Dated: March 09, 2016

Residential Tenancy Branch

