



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding david burr ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid utilities and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that on May 24, 2016 the Application for Dispute Resolution was sent to the Tenant at the service address noted on the Application, via registered mail. The Agent for the Landlord cited a Canada Post tracking number to corroborate this testimony. The Landlord did not submit any documentary evidence from Canada Post regarding this registered mail.

The Agent for the Landlord stated that she does not know if the Tenant resides at the service address noted on the Application for Dispute Resolution.

The Agent for the Landlord stated that she does not know how the Landlord obtained the service address for the Tenant that is noted on the Application for Dispute Resolution.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord.

When a landlord files an Application for Dispute Resolution in which the landlord applies for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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) by sending a copy by registered mail to a forwarding address provided by the tenant; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that he was served with these documents in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted insufficient evidence to show that the Application for Dispute Resolution was mailed to the Tenant at his residential address or at a forwarding address provided to the Landlord at the end of the tenancy. I therefore cannot conclude that he was served with this document in accordance with sections 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence to show that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner. I therefore cannot conclude that this document was served to the Tenant in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As I have been unable to conclude that the Application for Dispute Resolution has been served to the Tenant in accordance with section 89(1) of the *Act*, I am unable to proceed with the hearing in the absence of the Tenant.

Conclusion

As this hearing did not proceed due to service issues, the Application for Dispute Resolution 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: November 16, 2016

Residential Tenancy Branch