



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, Residential Tenancy Regulation ("*Regulation*") or tenancy agreement pursuant to section 67;
- 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Application for Monetary Order

The landlord initially testified that on July 9, 2016 she attached a copy of the landlord's application for dispute resolution hearing package to the door of where the tenant was residing.

Section 89 of the *Act* establishes that when a landlord serves an application for dispute resolution in relation to a monetary claim it must be served by leaving it directly with the tenant or by registered mail to a forwarding address provided by the tenant.

Upon notifying the landlord of this service issue during the hearing, the landlord requested I review her proof of service. The proof of service confirms the landlord attached the application to the door on July 9, 2016 and indicates on this same date an agent of the landlord's knocked on the door and verbally confirmed with the tenant that he had received the application attached to his door.

The landlord presented the agent as a witness. The witness testified that she knocked on the door and served the application. When questioned on the discrepancy between the proof of service and her testimony the witness could not recall whether she served the application or just verbally confirmed the tenant had received the application attached to the door by the landlord.

I find the witness testimony to be contrary to the proof of service and initial landlord testimony. Based on the landlord's initial testimony and proof of service, I find that the application was attached to the door and in the absence of an application for substituted service, I find that the landlord has not served the application for a monetary order for dispute resolution to the tenant as required under the *Act*. Accordingly I dismiss the landlord's application.

Conclusion

I dismiss the landlord's entire application with leave to re-apply.

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: January 09, 2017

Residential Tenancy Branch