



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MND, MNDC, FF

Background and Evidence

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The male Landlord stated that the female Tenant did not provide him with a forwarding address when she vacated the rental unit. He stated that he obtained an address for the female Tenant by conducting a title search of her company. He stated that he mailed the Notice of Hearing and Application for Dispute Resolution package to the Tenant at that address, via registered mail, on February 20, 2009. He stated that he does not know if the Tenant resides at this address.

The male Landlord stated that he also mailed the Notice of Hearing and Application for Dispute Resolution package to the Tenant at her business address, via registered mail, on February 20, 2009.

Section 89(1) of the *Act* stipulates that the Notice of this hearing and associated documents must be served on tenants in one of the following ways:

- by leaving a copy with the person;
- by sending a copy by registered mail to the address **at which the person resides;**
- by sending a copy by registered mail to a forwarding address **provided by the tenant;** or
- as ordered by the director under section 71 (1).

I find that the Landlord has not served the Notice of Hearing and Application for Dispute Resolution package to the Tenant in accordance with section 89(1) of the *Act*. As the Tenant has not been properly served with notice of this hearing, I dismiss the claims



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against the female Tenant, with leave to reapply. The Landlord retains the right to file a new Application for Dispute Resolution naming the female Tenant as a respondent.

The male Landlord stated that he did not have a forwarding address for the male Respondent. He stated that he mailed the Notice of Hearing and Application for Dispute Resolution package to the Tenant at the address he provided at the beginning of the tenancy, which is also the address that appears on his driver's license, via registered mail, on February 20, 2009.

The male Respondent stated that he does not live at the address noted on his driver's license and that he was not served with a Notice of Hearing or the Application for Dispute Resolution package. He stated that he was advised that there would be a hearing today because he had contacted the Residential Tenancy Branch in regards to another matter. He stated that he was prepared to proceed with the hearing, regardless of the fact that he was not served with proper notice of this hearing.

The male Respondent stated that he has never been a tenant in the rental unit that is the subject of this dispute; that he never entered into a tenancy agreement with the Landlord in regards to this rental unit; that he has never had keys to the rental unit; and that he has never lived in the rental unit. He stated that he helped the Tenant, who is his former partner, locate the rental unit; that he helped her move into the rental unit; and that he loaned her the money to pay for the security deposit and the first month's rent.

The male Landlord stated that the male Respondent came with the Tenant to inquire about the rental unit and that he paid the security deposit and the first month's rent, which caused him to believe that the male Respondent would be residing in the rental unit. He acknowledged that the male Respondent never actually advised him that he would be residing in the rental unit.

The Landlord submitted a copy of a Residential Rental Application that was submitted prior to the beginning of this tenancy. The female Tenant is the first person listed on the application form. The form has a space to list the name of the second applicant. This space has been amended by crossing out the title "second applicant" and replacing it with "partner". The male Respondent's name appears in the amended space, and clearly identifies him as the Tenant's "partner". I find that this application form corroborates the male Respondent's testimony that he did not enter into a tenancy agreement with the Landlord and that he did not intend to enter into a tenancy agreement with the Landlord.

The Landlord stated that he has a written tenancy agreement, although the agreement was not submitted in evidence. He stated that the female Tenant's name appears on the tenancy agreement and that the agreement was signed by the female Tenant. He stated that the male Respondent's name appears on the tenancy agreement, although he acknowledges that the male Respondent did not sign the agreement. He further



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acknowledged that the Landlord entered the names of the parties on the tenancy agreement.

After considering all of the above evidence, I find that the Landlord has not established that he had a tenancy agreement with the male Respondent. In reaching this conclusion, I was strongly influenced by the fact that the Landlord acknowledged that he has a written tenancy agreement that was not signed by the male Respondent; by the fact that the male Respondent is not identified on the rental application form as an applicant; and by the absence of evidence that refutes the male Respondent's statement that he has never lived in the rental unit.

As I have determined that the male Respondent did not have a tenancy agreement for this rental unit, I hereby dismiss the Landlord's claims against the male Respondent, without 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: May 06, 2009.
