



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order for monetary relief and to recover the filing fee?

Background and Evidence

The Tenant did not appear at the hearing. The Landlord testified that he delivered the Application and Notice of Hearing documents personally to the Tenant, but upon further query, the Landlord testified that the documents were left on the door at the Tenant's mother's address. The Landlord testified that this home was the forwarding address left by the Tenant.

Analysis

The evidence supports the Notice of Dispute Resolution package was delivered in a manner not consistent with Section 89 of the *Residential Tenancy Act*.

Additionally the rules of procedure state that if a respondent, the Tenant in this case, cannot be found, the applicant, the Landlord in this case, can return to the Residential Tenancy Branch and request an order for substituted service. The application for substituted service can be made at the start of the hearing provided that reasonable

attempts have been made to serve the respondent. I do not find that Landlord made reasonable attempts to serve the Tenant.

To find in favour of an application for a monetary claim, 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 the *Act*, I **dismiss** the Landlord's claim, **with leave to reapply**.

I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

As the Landlord has not been successful with his application, I find that he is not entitled to recover the cost of the filing fee from the Tenant.

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 21, 2011.

Residential Tenancy Branch