Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNSD

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order to retain the security deposit - Section 38.

The Tenant did not appear at the Hearing. At the onset of the Hearing, the Landlord stated that the application was served by the previous manager and was unable to provide any other evidence of service of the application for dispute resolution

Section 89 of the Act provides as follows:

> (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
>
> > (a) by leaving a copy with the person;
> >
> > (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
> >
> > (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> >
> > (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> >
> > (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Further, section 3.3 of the Residential Tenancy Branch Rules of Procedure provides that if the respondent does not attend the hearing, the applicant must prove that the respondent was served as required under the Act. The person who served the documents must either attend the hearing as a witness or submit a sworn affidavit of

service. As the Landlord was unable to prove service as required by the Act, I dismiss the application 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: October 13, 2011.

_____

Residential Tenancy Branch