



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNDC, MNR, 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 money owed or compensation for damage or loss; for a monetary Order for unpaid rent; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the service address noted on the Application for Dispute Resolution. The Landlord cited a Canada Post tracking number to corroborate this statement.

The Landlord stated that "I think I recall some agent" told her that the Tenant was living at the service address noted on the Application for Dispute Resolution. She was unable to recall specifically how she was told the Tenant was living at the service address. She stated that the Tenant did not provide her with a forwarding address and she did not respond to the Landlord's emails or phone messages.

The Landlord stated that she understood the residence at the service address noted on the Application for Dispute Resolution is currently for sale; that she phoned the real estate agency that is listing the residence; and that an unknown person at the real estate agency confirmed that the Tenant was living in the rental unit.

The Landlord was given the opportunity to check the Canada Post website during the hearing in an attempt to determine whether the registered mail was received by the Tenant. After viewing the Canada Post website the Landlord stated that the website shows the registered mail was delivered on June 10, 2010 and that it was signed for by a person with a surname that is different from the Tenant's. The Landlord does not know if that person is associated with the Tenant.

### Analysis

The purpose of serving the Application for Dispute Resolution to a tenant is to notify them that a dispute resolution proceeding has been initiated and to give a tenant 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 has applied 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) 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*].

There is no evidence that the Tenant was personally served with the Application for Dispute Resolution, therefore I find that she was not served in accordance with section 89(1)(a) of the *Act*.

I find that the Landlord has submitted insufficient evidence to cause me to conclude that the Tenant is residing at the service address listed on the Application for Dispute Resolution. Even if I were to accept that the Landlord was advised by an unidentified person in a real estate office that the Tenant was residing at that address, I have insufficient reason to conclude that the information provided is accurate.

I note that the Canada Post website indicates that the registered mail sent by the Landlord was received by a person with a surname that is different from the Tenant's. I note that the Landlord does not know if this person is associated with the Tenant. This information does not assist me in determining whether the Tenant resides at the service address.

I find that the Landlord has submitted insufficient evidence to cause me to conclude that the Tenant is currently residing at the service address and I cannot, therefore, conclude that she was served in accordance with section 89(1)(c) of the *Act*.

As the Tenant did not provide the Landlord with a forwarding address at the end of this tenancy, I cannot conclude that she was served in accordance with section 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution in an alternate manner, therefore I find that the Tenant was served 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, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

Conclusion

Having found that the Landlord has failed to prove service of the Application for Dispute Resolution, I hereby dismiss the Landlord's Application for Dispute Resolution, 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 20, 2010.

---

Dispute Resolution Officer