



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking monetary orders of over \$23,000.00 for alleged damages to the rental unit, for alleged money owed or compensation under the Act or tenancy agreement, to retain the security deposit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

This was the third different matter between the parties to come for Dispute Resolution.

During the course of the hearing, the Tenants testified that they had not been served with the evidence of the Landlord, contained in a binder. The Tenants asked that this evidence be found inadmissible.

### Issue(s) to be Decided

Is the evidence of the Landlord admissible?

### Background and Evidence

The Landlord testified he sent the evidence to the Tenants by registered mail, which was sent on January 6, 2011. The Landlord also testified he served one of the three Tenants personally on January 11, 2011.

The date of this hearing was January 13, 2011.

The Tenants testified that they had not received the Landlord's binder of evidence.

The Landlord continued to provide evidence to the Residential Tenancy Branch on January 11, 2011, and on the date of the hearing.

Analysis

Under section 3.5 of the Rules of Procedure (the “Rules”), the Landlord was to serve all the Tenants and the Residential Tenancy Branch “at least five days” before the hearing. “Days” as defined under the Rules, excludes the first and last days in this calculation.

Therefore, the Tenants should have received the Landlord’s evidence no later than January 5, 2011, in order for them to have been served in accordance with the rules.

The Landlord testified he sent the registered mail on January 6, 2011. Under section 90 of the Act, mail is deemed to be received on the fifth day after it is mailed. Therefore, the evidence of the Landlord was deemed received by the Tenants on January 11, 2011, or two days before the hearing.

Therefore, based on the above, I find the Landlord has failed to serve the Tenants with his evidence at least five days before the hearing. Under section 11.5 of the Rules, I must now determine if the evidence should be accepted.

It is fact that these parties have had two prior dispute resolution hearings.

I find the Landlord was or should have been aware of the requirements for the service of evidence, having been through two prior hearings and having availed himself of legal advice.

Therefore, I refuse to accept the evidence of the Landlord as I find there has been a wilful failure to comply with the Act and the Rules of Procedure.

Having found the Landlord’s evidence is inadmissible, I must find that the Landlord has insufficient evidence to prove his claim against the Tenants, and I order that the Landlord’s claim be dismissed, 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: January 18, 2011.

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Residential Tenancy Branch