



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **Decision**

### **Dispute Codes:**

MND, MNR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed and damages and an order to retain the security deposit in partial satisfaction of the claim.

### **Preliminary Issue**

The hearing commenced as scheduled and only the applicant landlord appeared. At the outset of the hearing the landlord stated that the tenant was served with the Notice of Hearing these proceedings by registered mail sent on October 14, 2010. However, the landlord did not submit evidence to prove service nor was the landlord able to supply the registered mail tracking number from Canada Post.

Section 89 (1) of the Act states that an application for dispute resolution 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*]. (substitute service)

The burden of proof is on the applicant to prove that the respondent was properly served according to the Act.

The landlord made a request to submit the evidence confirming service, after the hearing. However, Rule 3 of the Residential Tenancy Rules of Procedure, requires that the applicant submit evidence to the Residential Tenancy Office in advance of the hearing. Moreover, the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that “*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible*”.

Given that the landlord had not offered sufficient proof to establish that the respondent was served,, I found that the hearing could not proceed because it is contrary to administrative fairness and natural justice for additional evidence to be accepted after the hearing has already commenced.

In the absence of evidence that should have been before me, I found that the landlord had not sufficiently proven that the tenant was served in compliance with the Act and the landlord’s application must be dismissed.

Accordingly, I hereby dismiss the landlord’s 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: February 2011.

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Residential Tenancy Branch