

## DECISION

Dispute Codes      MNDC, MNSD, RPP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

The landlord did not attend this hearing, although I waited until 11:12 a.m. in order to enable the landlord to connect with this hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

### Issues(s) to be Decided

Has the tenant served her application for dispute resolution to the landlord in accordance with the *Act*?

### Background and Evidence

The tenant said that she served a copy of her dispute resolution hearing package to the landlord by giving it to a resident at the dispute address, Mr. BH, on March 9, 2011. She said that she discussed her application for dispute resolution with the landlord later that day by telephone. She said that the dispute address is the only one that she has for the landlord. She understands that the landlord no longer lives at this address.

### Analysis – Service of Tenant's Application

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...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 document]...*

At the hearing, the tenant provided conflicting testimony regarding whether and when the landlord instructed her to serve her dispute resolution hearing package to Mr. H as the landlord's agent. I find more credible her initial testimony that she handed her dispute resolution hearing package to a resident at the rental property. Based on her initial testimony, I find that the tenant received no specific instruction from the landlord identifying Mr. H as the landlord's agent before she gave this package to Mr. H.

I am not satisfied that the landlord was properly served with the tenant's application for dispute resolution in a manner required by section 89(1) of the *Act*.

#### Conclusion

I dismiss the tenant'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*.