



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all of the security and or pet deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

### Issue(s) to be Decided

1. Has the Tenant been sufficiently served with the Notice of Dispute Resolution hearing documents?

### Background and Evidence

The Landlord appeared at the teleconference hearing and affirmed that she served the Tenant with the Notice of Reconvened Hearing documents by serving him via registered mail that was addressed to her own address. The rental unit is located in the basement of the Landlord's address. The Tenant had vacated the rental unit prior to the Landlord filing her application for dispute resolution.

The Landlord stated that the Tenant had given her a note stating that she should mail all correspondence to her own address as he had set up mail forwarding through Canada Post. A copy of this note was not provided in the Landlord's evidence however the Landlord did provide the envelope(s) which confirms the Tenant did not receive the hearing documents as they were returned to her.

### Analysis

Section 89 of the Act provides that if documents are being served via registered mail they must be sent to the address where the Tenant resides. Section 90(c) of the Act provides that a document served by registered mail is deemed received on the fifth day

after it is mailed. However, this is a rebuttable presumption. In this case, because the evidence supports the Tenant did not receive the hearing documents, I find that the presumption has been rebutted and service has not been effected in accordance with the Act. Accordingly the Landlord's application is dismissed, with leave to reapply.

Conclusion

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: September 09, 2011.

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Residential Tenancy Branch