



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

This hearing dealt with an Application for Dispute Resolution by the Tenant for a monetary order for a security deposit and the filing fee.

The Tenant provided affirmed testimony that he served the Landlord, with the Application for Dispute Resolution and Notice of Hearing on October 06, 2011, by regular mail to the Landlord's address.

The Landlord did not participate in the conference call hearing.

The Tenant testified that the Landlord has failed to return his security deposit and that he provided a forwarding address to the Landlord when the tenancy ended. The Tenant also stated that he had not submitted his evidence regarding the security deposit in advance of the hearing. The Tenant explained that he is inexperienced in dealing with residential tenancy matters, so he did not realize that regular mail would not suffice to serve the Application for Dispute Resolution and the Notice of Hearing to the Landlord or that the Tenant's evidence of the security deposit paid would also be expected to be received in advance of the hearing.

The Notice of Hearing and Application for Dispute Resolution package were made available to the Tenant on October 05, 2011. Section 59(3) of the Residential Tenancy Act, the "Act", requires that the applicant serve the respondent with the Application, which includes the Notice of Hearing, within three days. Section 89 of the Act, provides specific rules for the service of the Application for dispute resolution package. Section 89 states:

### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents*].

For the parties' reference, the Residential Tenancy Branch Rules of Procedures state the following with regards to evidence:

**3.4 Evidence to be filed with the Application for Dispute Resolution**

To the extent possible, the applicant must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

**3.5 Evidence not filed with the Application for Dispute Resolution**

a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.

c) If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

The Tenant served the Application and Notice by sending it by regular mail to the Landlord, thus I find that the Tenant failed to serve these documents in accordance with section 89 of the Residential Tenancy Act (the "Act"). The Tenant also acknowledged that he had not submitted evidence in advance of the hearing, regarding the security deposit paid to the Landlord during the tenancy.

The Tenant's Application is dismissed 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: November 23, 2011.

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Residential Tenancy Branch