



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes: MNDC MNR MND MNSD FF

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that this tenancy ended on October 31, 2011 and that on October 31, 2011 the Tenant sent her an email, in which she provided a forwarding address. A copy of this email was submitted in evidence. The Landlord stated that the Tenant told her the forwarding address was her business address, although I note that it does not state that in the aforementioned email.

The Landlord stated that she went to the forwarding address provided by the Tenant and determined that it is an address for a company with a different name than the Tenant's company. She stated that there was nobody at that address so she was unable to ascertain whether this was a mailing address for the Tenant. The Landlord stated that she did not mail documents to the forwarding address provided by the Tenant because she did not believe it was an accurate address for the Tenant.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application for Dispute Resolution, on November 10, 2011. The Landlord submitted Canada Post Documentation that corroborates the Landlord sent a package via registered mail on this date. The Landlord submitted no evidence to show that this package was received by the Tenant.

The Landlord stated that she obtained the service address noted on the Application for Dispute Resolution by following the moving truck from the rental unit to this address, where she observed the Tenant's furniture being moved into this address. She stated that she has since driven by the address and observed the Tenant's vehicle parked at the address.

The Landlord submitted a copy of an email from the Tenant, dated November 17, 2011. In that email the Tenant informs the Landlord that she saw her "driving by my friends" when she was bringing some of her things "for storage", and she reminds her that she has provided her with a forwarding address.

The purpose of serving the Application for Dispute Resolution and Notice of Hearing is to notify the Tenant that a legal proceeding has been initiated. When a landlord files an Application for Dispute Resolution in which the landlord applies for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that she was not served in accordance with section 89(1)(a) of the *Act*.

I find that I have insufficient evidence to conclude that the Tenant resides at the service address on the Application for Dispute Resolution. In reaching this conclusion I was heavily influenced by the email, dated November 17, 2011, which the Tenant sent to the Landlord.

In the aforementioned email the Tenant clearly informs the Landlord that she was moving property into the address on Panorama “for storage”. While I accept that the Landlord observed the Tenant moving property into this address, I find that the email does not support the Landlord’s assumption that the Tenant is living at this address. In this email the Tenant describes this property as her “friends”, which causes me to conclude that her friend resides at this address. While I accept that the Landlord has seen the Tenant’s vehicle at this address, I find that it is entirely possible that the Tenant is visiting a friend at this address, and that she does not reside at this address.

As I have insufficient evidence to conclude that the Tenant is residing at the service address, which is where the Landlord sent the Application for Dispute Resolution and Notice of Hearing, I cannot conclude that she was served in accordance with section 89(1)(c) of the *Act*.

The Landlord stated that she did not send the Application for Dispute Resolution or Notice of Hearing to the forwarding address provided to her by the Tenant and I cannot, therefore, conclude that she was served in accordance with section 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the female Tenant in an alternate manner, therefore I find that she was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

The aforementioned email, dated November 17, 2011, came to light after the hearing had commenced. Upon viewing this email the Landlord was advised that I would be reconsidering my determination that the Tenant had been properly served with the Application for Dispute Resolution and the Notice of Hearing.

Upon reflection, I have concluded that the Application for Dispute Resolution and the Notice of Hearing were not served to the Tenant in accordance with the legislation. I therefore dismiss the Landlord's Application for Dispute Resolution, 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: January 30, 2012.

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Residential Tenancy Branch