



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF, SS, O

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the security deposit or pet damage deposit; for an order permitting the landlords to serve documents or evidence in a different way than required by the *Act*, for a monetary order for removing the tenant's personal belongings, and to recover the filing fee from the tenant for the cost of this application.

Three of the four named landlords attended the conference call hearing, however the tenant did not attend. The landlords stated that the Landlord's Application for Dispute Resolution, notice of hearing and evidence was served on the tenant personally by a neighbour of the tenant. One of the landlords attended at the tenant's place of employment and at the tenant's residence but was not able to serve the documents. The documents were in an envelope and the envelope was given to a neighbour of the tenant who agreed to personally serve the tenant. The landlord called the neighbour to confirm that the documents had been served on the tenant, and the neighbour stated that they were in fact served. The neighbour was called by one of the landlords during the hearing, but the neighbour did not attend the conference call hearing to provide such testimony. No proof of service has been provided.

The landlords were asked during the course of the conference call what orders are being sought for the application for an order permitting the landlords to serve documents or evidence in a different way than required by the *Act*, but stated that advice from the Residential Tenancy Branch was to check off that box on the application and the landlords do not know what order or orders are being sought for such service.

### Analysis

The *Residential Tenancy Act* states that:

**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*].

The *Act* also states that a party who makes an application for dispute resolution must serve it on the other party within 3 days of making the application.

Further, the Residential Tenancy Branch Rules of Procedure require that the applicant serve each respondent with copies of the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch, along with the information package provided by the Residential Tenancy Branch, the details of any monetary claim being made and any other evidence accepted by the Residential Tenancy Branch. If a respondent avoids service or cannot be found, the applicant can return to the Residential Tenancy Branch and request an order for substitutional service, or request that order at the start of the hearing, provided that reasonable attempts have been made to serve the respondent.

If the respondent does not attend the hearing, the applicant must prove to the Dispute Resolution Officer that the respondent was served as required by the *Act*. The person who served the documents must attend the hearing or provide an affidavit of service.

In this case, the landlords did not know what orders were contemplated regarding service upon the respondent, but relied on advice from an Information Officer at the Residential Tenancy Branch to check off that box on the Landlord's Application for Dispute Resolution. It may very well be that the tenant received the documents as described by the landlord, however the person who served the documents was not available to testify as to how the documents were served or when. The person did not provide an affidavit of service, and therefore, I cannot be satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the landlords' application is hereby 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: March 14, 2012.

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Residential Tenancy Branch