



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MND, MNDC, MNR, FF

### **Introduction**

This Dispute Resolution hearing was to deal with an application by the tenant for damages. The hearing was also to deal with a cross application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act).

Only the landlord attended. As the tenant did not attend to present his evidence for the return of the security deposit, the tenant's application was dismissed and only the hearing for the landlord's claim proceeded.

### **Preliminary Matter**

The landlord testified and provided evidence that on that on April 11, 2012 the landlord sent the hearing package by registered mail to the only address that the landlord had obtained in a communication on behalf of the tenant dated February 10, 2012. This letter included the tenant's Post Office Box at a crisis shelter. The landlord testified that the tenant had not picked up their registered mail.

Because the landlord was seeking a monetary order, and based on the testimony given by the landlord, I find that the tenant was not properly served with this Application in compliance with Section 89 of the Act which states that an application for dispute resolution, when required to be served by the landlord to the tenant, must either be given directly to the person or sent by registered mail to the address at which the person resides or to a written forwarding address provided by the tenant.

In this instance although the landlord had obtained an address where the tenant was temporarily staying back in February 2012, I find that the landlord had not made its application until over two months later and it is likely that the tenant was no longer at this address provided. Moreover, the Notice of Hearing was sent by registered mail to a Post Office Box rather than to the tenant's own residential address and there is no way to know that the mail had been delivered to where the tenant is actually residing.

The burden is on the applicant to prove that the service was within the above provisions. As the landlord served the documents to an address that was not sufficiently confirmed to be that of the tenant's current residence, I find that it would not meet the definition of service by registered mail to the "*address at which the person resides*" and is therefore I do not consider this to be valid service under the Act.

Given the above, I find that the matter under dispute cannot proceed because the landlord has not proven that the tenant was properly served and I therefore have no choice under the Act but to dismiss this application with leave to reapply at a later date should the landlord wish to do so, once the residential service address has been located for the respondent.

### **Conclusion**

Based on evidence and testimony, I hereby dismiss the tenant's application without leave to reapply.

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: April 23, 2012.

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Residential Tenancy Branch