



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, OLC, RP, ERP, RR

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant, filed on February 19, 2013, in which the applicant was requesting a monetary order against the landlord for devalued tenancy and loss of quiet enjoyment.

Only the applicant tenant appeared.

### **Preliminary Matter**

The tenant testified that they served the landlord with the Notice of hearing by registered mail sent on a date after the application was filed. No proof of service was submitted into evidence and the tenant was not able to provide the parcel tracking number from Canada Post.

However, according to the tenant, the registered mail came back unclaimed and the tenant then served it to the landlord in person on March 28, 2013.

Section 59 of the Act states that an application for dispute resolution must be in the approved form, include full particulars of the dispute that are the subject of the dispute resolution proceedings. A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. (my emphasis)

In this case, the tenant alleges that he did serve the landlord by registered mail, possibly within the mandatory 3 days. However, the tenant could not provide sufficient evidence to verify this was done, nor what date the package was actually sent.

In regard to the tenant's second effort to serve the Notice of Hearing package in person, which occurred on March 28, 2013, I find that service "in-person" service is permitted under the Act. However, I find that the landlord was not served within 3 days and, in fact, was served more than one month after the tenant made the application.

In this instance, I find that the applicant tenant was not able to prove that the other party, who was not at the hearing, had been properly served in compliance with the Act.

The *NOTICE OF A DISPUTE RESOLUTION HEARING* sheet giving the date and time of the hearing along with the phone number and participant access code for the teleconference, also contains guidance under the heading “*GENERAL INFORMATION about your responsibility and the hearing*”. This section of the document states, in part:

*“Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are important”*

(my emphasis)

Based on the above, I find that this matter cannot proceed because the tenant was not able to sufficiently prove that the landlord was properly served with the Notice of Hearing in accordance with the Act.

Therefore I dismiss the tenant’s application with leave to reapply.

### **Conclusion**

The tenant’s application is dismissed with leave to reapply due to missing proof of service.

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: May 14, 2013

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Residential Tenancy Branch

