



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMOS REALTY & PROPERTY MANAGEMENT LTD.  
and [tenant nauppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNDC, RR, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation for the loss of quiet enjoyment, for the decreased value of the tenancy and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant had made this application in early 2012 and a hearing was conducted on March 16, 2012. The Arbitrator found that the tenant had not provided the landlord with a copy of his evidence to support his claim. The Arbitrator also found that the tenant had filed his evidence package with the Residential Tenancy Branch. The Arbitrator dismissed the application with leave to reapply in order to give the tenant an opportunity to serve the landlord with his evidence and to give the landlord an opportunity to review and prepare his rebuttal.

The tenant reapplied more than a year later, on April 23, 2013. At the time of application, the tenant filed a copy of his evidence at the Residential Tenancy Branch Office.

The tenant resides in a city that is located approximately 340 kilometers away from the city that the dispute rental unit is situated at. The tenant stated that he drove to the rental office on April 25, 2013 and upon arrival, asked to see the property manager. Both parties agreed that during this visit, the tenant provided the manager with a copy of the notice of hearing, a copy of his application for dispute resolution and six pages of landlord and tenant fact sheets.

Despite making the long trip on April 25, 2013, to deliver the above documents the tenant did not serve the landlord with his evidence package, even though it was already prepared. The tenant stated that he had not made photocopies and that he was aware of the timelines for service. The tenant stated that since the hearing was scheduled for July 17, 2013, he had plenty of time to make copies and to serve the landlord in a timely manner.

The tenant stated that on July 09, 2013, he drove 340 kilometers to the rental office for a second time, to drop off his evidence package. The tenant added that he did not like to spend time in the office, so he just handed it over to the receptionist who is also the daughter of the property manager. The tenant did not have any form of evidence to support his testimony of service of the evidence package to the landlord.

The landlord stated that he did not receive any evidence from the tenant. He also stated that on July 09, 2013, he was present in the rental office between appointments and his assistant was also present in the office while he was away.

### **Issue to be Decided**

Was the landlord served with the tenant's evidence package? If so is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started on May 15, 2011 and ended on October 31, 2011. Rent was \$1,100.00 per month due on the first of each month.

### **Analysis**

In a decision dated March 16, 2012, the Arbitrator clearly outlined the Rules of Procedure regarding the service of documents. Despite not having served the evidence package on the landlord for the hearing on March 16, 2012, the Arbitrator dismissed the application with leave to reapply, thereby giving the tenant a second opportunity to so.

Based on the testimony of both parties, I find that the tenant had prepared his evidence package by April 23, 2013, at which time he served a copy to the Residential Tenancy Branch. Two days later the tenant drove 340 kilometers to the rental office and served the landlord with the notice of hearing, a copy of his application and fact sheets, but failed to provide the evidence package.

Rule 3 of the *Residential Tenancy Branch Rules of Procedure* addresses how to serve the application and the applicant's evidence. Rule 3.1 (d) states that together with a copy of the application for dispute resolution, the applicant must serve each respondent with copies of any evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

The purpose of serving evidence to the respondent is to notify the person being served of matters relating to arbitration.

The tenant stated that he made the trip again on July 09, 2013 to serve the evidence package and simply handed it over to the receptionist. During the earlier visit the tenant had asked for the property manager but decided not to do so for the service of his evidence package. The landlord denied having received the package.

During the discussion regarding service of the evidence package to the landlord, I asked the tenant the reason for travelling a long distance to serve the package instead of sending the package by registered mail. The tenant stated that he wanted to deliver it in person. However, despite making the long trip to deliver the package in person, the tenant stated that he did not ask for the property manager as he had done before but handed it over to the receptionist. In addition the tenant did not obtain any proof of receipt of the package from the receptionist. Based on the above, I find on a balance of probabilities, that it is more likely than not that the landlord did not receive the package.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the landlord denied having received the tenant's evidence and the tenant did not have any proof of having served the evidence. I find that the landlord did not receive a copy of the tenant's evidence and therefore was not given an opportunity for rebuttal. Accordingly, I am not able to use the tenant's evidence in the resolution of this dispute and therefore in the absence of evidence, the tenant has not proven his case.

### **Conclusion**

The tenant's application is dismissed without 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: July 17, 2013

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Residential Tenancy Branch

