



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MNSD, FF

### Introduction

This Dispute Resolution hearing was originally held on August 21, 2013 to deal with an Application by the tenant seeking an order for the return of the security deposit retained by the landlord.

Neither party attended the original hearing and the application had been dismissed with leave to reapply. However, the tenant made a successful application for Review Consideration and a re-hearing was scheduled and is before me today.

### Preliminary Issue

The hearing commenced as scheduled and only the applicant tenant appeared.

At the outset of the hearing the tenant testified that he believed that the documents notifying the landlord of the reconvened hearing date and time had been served to the respondent by the Residential Tenancy Branch.

However, I find that the Review Consideration Decision, that granted the re-hearing, ordered that the hearing be reconvened for today and further instructed the tenant that:

*"I order that a new hearing take place and I order that the Original Decision made on August 21, 2013 is suspended pending completion of the new hearing.*

***Notices of the time and date of the new hearing and a copy of this Review Consideration Decision are included for the Tenant to serve to the Landlord within 3 days of receipt of this Decision."***

(Reproduced as written)

I find that the tenant was required to serve the other party with the Notice of Reconvened Hearing.

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)

Section 89 (1) of the Act states that an application for dispute resolution 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*]. (substitute service)

The burden of proof is on the applicant to prove that the respondent was properly served according to the Act.

The tenant was unable to prove that the tenant served the respondent in compliance with the Act. Therefore, I found that the hearing could not proceed.

Accordingly, I hereby dismiss the tenant's application with leave to reapply.

### **Conclusion**

The tenant's application was 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: October 09, 2013

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Residential Tenancy Branch

