



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC O FF  
                              MNSD

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on July 15, 2013, to obtain a Monetary Order for: damage to the unit, site, or property; unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for other reasons; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking a Monetary Order for the return of the security deposit.

No one appeared on behalf of the Tenant despite the Tenant despite this hearing being scheduled to hear matters pertaining to the Tenant's own application for dispute resolution scheduled for the same hearing date and time as the Landlord's application. Accordingly, I proceeded in the absence of the Tenant.

### Issue(s) to be Decided

1. Should the Landlord's application be dismissed with or without leave to reapply?
2. Should the Tenant's application be dismissed with or without leave to reapply?

### Background and Evidence

The Landlord initially testified that he served the Tenant with copies of his application and hearing documents by placing them in the Tenant's mailbox. At eleven minutes into the proceeding I informed the Landlord that I would not be able to proceed with his application because he did not serve the Tenant in accordance with the Act. Then the Landlord stated that he had found a Canada Post tracking receipt for a package that he sent to the Tenant registered mail. He indicated that he refused to pay Canada Post the money required for a signature for proof of delivery and then stated he placed the registered package in the Tenant's mailbox himself.

### Analysis

## **Landlord's Application**

Section 89 of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary order which requires that the Landlord serve the named respondent to this dispute, as set out under section 89(1) of the *Residential Tenancy Act*, either in person or by registered mail to the address where the tenant resides.

In this case the Landlord applied for monetary compensation and provided contradictory testimony as to how the hearing documents and application were served to the Tenant. The Landlord affirmed that he refused to pay Canada Post for a signature to prove the Tenant was served. Accordingly, I find there is insufficient evidence to prove the Tenant was sufficiently served notice of the Landlord's application. Therefore, I dismiss the Landlord's application, with leave to reapply.

## **Tenant's Application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open for eleven minutes while the phone system was monitored and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the application is dismissed, without leave to reapply.

## **Conclusion**

The Landlord's application is dismissed, with leave to reapply.

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: October 24, 2013

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**Residential Tenancy Branch**