



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:50 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on August 16, 2013. The landlord entered into written evidence a Proof of Service document signed by the tenant confirming that the landlord handed him the 10 Day Notice on that date.

### Issues(s) to be Decided

Has the landlord served the tenant with his dispute resolution hearing package in accordance with section 89(1) of the *Act*? If so, is the landlord entitled to any of the remedies identified in his application for dispute resolution?

### Preliminary Issue – Service of Landlord's Application for Dispute Resolution

The landlord testified that he sent the tenant a copy of his dispute resolution hearing package on September 6, 2013 by registered mail. After considerable searching, the landlord provided the Canada Post Tracking Number to confirm this registered mailing.

Analysis – Landlord's Service of Application for Dispute Resolution

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, 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 document]...*

After this hearing, I checked the On-line Canada Post Tracking System to confirm the landlord's sworn testimony regarding the service of his dispute resolution hearing package to the tenant by registered mail. The Tracking Number entered into sworn oral testimony at the hearing by the landlord related to a registered mailing sent on August 19, 2013, many days before the Residential Tenancy Branch (the RTB) issued the Notice of Dispute Resolution Hearing on September 6, 2013. Whatever was sent by registered mail on August 19, 2013 did not include the Notice of Dispute Resolution Hearing prepared by the RTB on September 6, 2013. The Canada Post Tracking System also noted that the registered letter sent on August 19, 2013 was returned to the sender, and signed for by someone with the landlord's same last name (JH) on September 11, 2013.

Although this was not an issue at the hearing, my subsequent comparison of the landlord's sworn testimony with the Canada Post Tracking System information leads me to conclude that the landlord has not provided adequate evidence to demonstrate that he has served the tenant with his application for dispute resolution in accordance with section 89(1) of the *Act*. After reviewing this matter further after the completion of this hearing, I find that the landlord has not served the tenant in a manner required by section 89(1) of the *Act*. I dismiss the landlord's application with leave to reapply as I am not satisfied that the tenant was properly served with the landlord's dispute resolution hearing package in accordance with the *Act*.

Conclusion

I dismiss the landlord's application for dispute resolution 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: December 16, 2013

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Residential Tenancy Branch

