



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

A hearing was conducted by conference call in the presence of the tenant applicant and in the absence of the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The evidence of the applicant with regard to service was not satisfactory. He initially testified that he served a copy of the Application for Dispute Resolution/Notice of Hearing by mailing by registered mail to where the respondent carries on business. He referred me to two Canada Post receipts found in the materials. On closer examination of the Canada Post receipt indicates that they are dated September 11, 2013 and pre-date the filing of the within application. The applicant then stated he was not able to find the registered mail receipt. Later, he testified that in March he gave the materials to a secretary for the respondent.

Policy Guideline #12 includes the following

Proof of service by registered mail should include the original receipt given by the post office and should include the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service.

Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply. Adjournments to prove service are given only in unusual circumstances.

I determined the evidence of the applicant about service is inconsistent. **I determined the applicant has failed to prove he has sufficiently served the respondent and accordingly the application is dismissed with liberty to re-apply. I make no**

**findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.**

The applicant testified that he previously applied for the return of the deposit. I waited a few minutes until he retrieved the decision letter from his car. That decision was dated August 26, 2013 and ordered the application dismissed with liberty to re-apply. However, the respondent at that hearing is identified as a corporate entity. The respondent in this application is an individual who acts as agent for the corporate entity. The tenant was not able to locate the written tenancy agreement which would identify the true landlord. It is not clear who the landlord is.

The applicant in this hearing was not able to recall when the tenancy started or when it ended. He testified he thought it ended at the end of May. The decision letter in the previous hearing indicates the tenancy ended on March 31, 2013.

The applicant has been given liberty to re-apply. However, liberty to re-apply is not an extension of any applicable limitation period. The applicant should **immediately obtain legal advice from a solicitor or talk to an information officer at the Residential Tenancy Branch if he intends to re-apply.** The following provisions of the Residential Tenancy Act may be relevant:

**Landlord may retain deposits if forwarding address not provided**

- 39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
  - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

**Latest time application for dispute resolution can be made**

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

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: March 12, 2014

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Residential Tenancy Branch

