



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD FF

### Preliminary Issues

At the outset of this proceeding I informed the Landlords that, although I had the same surname as the respondent Tenant, I was not related to her and I have never met her. The Landlords acknowledged my explanation and raised no issues with me adjudicating their application.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 15, 2013, by the Landlords to obtain a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*. The Landlords attended the scheduled teleconference hearing; however, no one on behalf of the Tenant appeared.

### Issue(s) to be Decided

Have the Landlords proven that the Tenant was served notice of this proceeding in accordance with section 89 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlords provided affirmed testimony that they personally served the Tenant with copies of their Application for Dispute Resolution and Notice of Hearing documents by leaving the package with a waitress on November 18, 2013 at 9:45 a.m., at a restaurant where the Tenant is employed.

The Landlords submitted that the waitress, D.T. was handed their hearing package, in the presence of her shift manager, at which time they asked D.T. to give the package to the Tenant. Neither the waitress nor the shift manager would agree to sign the Landlords' certificate of service that was provided in their documentary evidence.

### Analysis

Section 89(1) of the Act stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents*].

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the applicant must prove to the Arbitrator that the respondent was served as required under the Act. If served in person, the person who served the documents to the respondent must either attend the dispute resolution proceeding as a witness, either in-person or by conference call, or provide a signed affidavit affirming the date and time the respondent was served.

In this case the evidence supports that the Landlords served their hearing documents upon the Tenant's co-worker, a person who is not party to this dispute. In cases like this I would expect to see evidence that would prove how or when the co-worker served the package to the Tenant. Therefore, in the absence of evidence from the waitress, and in absence of Tenant at the scheduled teleconference hearing, I find there is insufficient evidence to prove the Tenant was sufficiently served notice of this proceeding in accordance with section 89 of the Act, as listed above. Accordingly, I declined to proceed with this application.

### Conclusion

The Landlords' application is HEREBY 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: March 05, 2014

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Residential Tenancy Branch

