



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of the double the amount of the security deposit and to recover the filing fee.

The party named on the Application as the Tenant appeared for the hearing and explained that she was the executor of her mother’s estate who passed away in December, 2013 and was trying to get back the security deposit that her mother (the “Tenant”) had paid at the start of this tenancy. For ease of reference, the Applicant is referred to as the “Tenant’s agent” in this decision.

There was no appearance by the Landlord for the duration of the hearing.

As a result, I turned my mind to the service of documents by the Tenant’s agent to the Landlord. The Tenant’s agent testified that the Tenant had a written tenancy agreement with a rental company who were acting as agents on behalf of the owner of the rental suite. The written tenancy agreement, which was not provided in written evidence, shows the service address of the Landlord as that of the company.

The Tenant’s agent testified that when the rental company were requested the return of the Tenant’s security deposit in writing, they explained that the Tenant’s security deposit had been returned to the owner and the Tenant’s agent should seek to obtain these monies from the rental suite owner.

The Tenant’s agent explained that she had managed to ascertain an address for the owner of the rental suite who was then served with a copy of the Application and the Notice of Hearing documents by registered mail as well as being served through her front door. However, the registered mail documents were returned as unclaimed by Canada Post.

The Tenant provided no written evidence as to whether a tenancy existed between the parties named on the Application and how the address the documents were mailed to belongs to the owner of the unit and that the documents could have been received at this address.

Based on the foregoing, I was unable to proceed with the Application as I was not satisfied that the Tenant's agent had served the Landlord in accordance with the Act to an address where the Landlord could have received the documents. Therefore, I dismissed the Application **with** leave to re-apply.

The Tenant remained on the line after the hearing had concluded at which point I provided further information to her about her rights and obligations under the Act.

The parties are cautioned about the service methods detailed in Section 89 of the Act and in particular the provision of Section 90 of the Act, which explains that documents served in a particular way, can be deemed to have been received after a certain amount of time. The Tenant is cautioned that documents cannot be slipped through the door in order to affect service under the Act. Both parties are also referred to the definition of a Landlord and Tenant as outlined in the Act, which is reproduced below for reference.

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

**"tenant"** includes

- (a) the estate of a deceased tenant

Furthermore, in relation to the service of documents by registered mail, a party cannot avoid service by failing or neglecting to pick up mail or use this as grounds for a review application. If a party can prove that documents were served to an address where the Landlord could have received them, then the deeming provisions of Section 90 of the Act may be applied when considering service of documents and moving forward with proceedings in the absence of a party.

### Conclusion

For the above reasons, I dismiss the Tenant's Agent's Application **with** leave to re-apply.

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: July 24, 2014

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Residential Tenancy Branch

