



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an order requiring the landlord to return the tenant's security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:48 pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 pm. The tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

### Preliminary Issue: Service of Documents

Tenant RN testified that the tenants' Application for Dispute Resolution was served to the landlord by registered mail on November 19, 2014. The tenants submitted a copy of their registered mail receipt with their evidence. Tenant RN testified that he paid a company to find an address for the landlords. He testified that the address he received was the landlord's lawyer's address. Both tenants testified that the address they had been given previously by the landlords was no longer current and that the landlords did not respond to or return their telephone calls.

The Legislation provides a limited number of service methods when a tenant is serving an application for dispute resolution. Pursuant to section 89(1) of the *Act*, certain documents, including the tenant's application for dispute resolution must be given to the landlord in one of the following ways; by leaving a copy with the landlord; by leaving a copy with an agent of the landlord; by sending a copy by registered mail to the address at which the person resides or to the address at which the person carries on business as a landlord; as ordered by the director under section 71(1). Firstly, with respect to service of documents, the tenants in this matter did not serve the landlord in any of the above permissible ways.

The Residential Tenancy Dispute Resolution Rules of Procedure Rule 3.1 reflect the requirements under the *Act*. One of the requirements that must be met is that the applicant/tenant must serve the respondent/landlord their dispute resolution package within 3 days of the hearing package being made available by the Residential Tenancy Branch. Secondly, with respect to the service of documents, the tenants did not send their dispute resolution package by registered mail until November 19, 2015, 7 days after receiving the materials.

Residential Tenancy Policy Guideline No. 12 provides that,

[if] a tenant intends to serve a document on the landlord in one of the above ways at the address at which he or she carries on business as a landlord, the tenant will need to determine the address at which the landlord carries on business as a landlord before serving. Such an address may include the following:

- The address of the landlord as set out in the written tenancy agreement.
- The address of the landlord's office or the landlord's manager's suite in an apartment or condominium building. ...
- The address where the landlord resides.
- A separate address where the landlord operates his or her business as landlord, such as an office in an office building or in a storefront operation, whether he or she carries on his or her business as landlord as the only business in the premises, or whether he or she carries on business as a landlord in conjunction with any other business of his or hers in premises shared with another business owned or operated by the landlord, or by someone else.
- A post office box where it is set out in the tenancy agreement as the address of the landlord, or it is the address where the landlord receives mail and notices, or is specified by the landlord to be his or her address for receiving mail or notices.

A landlord may operate a business as a landlord from one location and operate another business from a different location. The Legislation does not permit a tenant to serve a landlord in one of the ways set out above at the address where the landlord carries on that other business unless the landlord also carries on his or her business as a landlord at that same address.

Thirdly, with respect to service of documents, the tenants were unable to sufficiently prove that they served the landlord at an address where the landlord carries on business as a landlord.

The legislation has a provision for orders of substituted service. However, the tenant did not make such an application prior to this hearing. The Policy Guidelines indicate that an “application for substituted service may be made at the time of filing the application or at a time after filing.” A tenant applying for substituted service must be able to show that the landlord cannot be served by any of the methods permitted under the Legislation, and that there is a reasonable expectation that the landlord will receive the documents if substituted service is granted.

Residential Tenancy Policy Guideline No. 12 also states that,

All parties named on an application for Dispute Resolution must receive notice of proceedings. ... Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. ...

I find that the tenants did not serve the landlord with their Application for Dispute Resolution package in accordance with the *Act*. Therefore, in the circumstances, I dismiss the tenants’ 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: June 05, 2015

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Residential Tenancy Branch

