



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenancy agreement indicates there were two tenants, a male tenant and a female tenant. The landlord only named tenant in filing this application. The tenant did not appear at the hearing.

Where a respondent does not appear at a hearing, the applicant must be prepared to prove service occurred in on the ways required under section 89 of the Act. Where a landlord seeks to serve a tenant with a monetary claim, the landlord must serve the named tenant in person or by registered mail. If registered mail is used, the address for service must be the tenant's forwarding address or the tenant's address of residence at the time of mailing. As provided in Residential Tenancy Branch Policy Guideline 12: *Service Provisions*, 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 forwarding address or residence at the time of service. Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply.

In this case, the landlord provided a registered mail receipt as proof of service of the hearing documents. The landlord orally testified that the hearing package was sent to the tenant's forwarding address but the registered mail was returned as unclaimed. The address used for service appears on the move-out inspection report. No other documentary evidence to establish the tenant's forwarding address or address of residence at the time of mailing was provided. Accordingly, I have focused on the address that was provided on the move-out inspection report.

The move-out inspection report provided as evidence indicates that on October 27, 2014 a person had signed the move-out inspection report in the space provided for a tenant's signature and a forwarding address appears below that signature. The landlord testified that the signature appearing on the line for a tenant's signature was that of the male tenant's brother.

The landlord testified that the co-tenants had separated and the female tenant had moved to another province in September 2014 but the male tenant remained in the rental unit in October 2014. I heard that the male tenant was incarcerated in October 2014 and the male tenant's brother appeared at the property on October 27, 2014 to remove possessions from the rental

unit. The landlord also testified that the male tenant had appointed his brother to act on his behalf for the move-out inspection. The landlord testified that this was done by way of a letter written by the male tenant. As such, the male tenant's brother signed the move-out inspection report. I noted that the landlord had not provided a copy of the authorization letter in their evidence package and the landlord was asked to read the letter.

The landlord read from the letter written by the male tenant in October 2014. In listening to the landlord read the letter, I determined that the purpose of the letter was to authorize the male tenant's brother to retrieve possessions from the rental unit. The male tenant also acknowledged in the letter that he did not expect return of the security deposit since rent was not paid while he occupied the rental unit in October 2014. The letter does not mention that his brother may act on his behalf for purposes of completing the move-out inspection report.

Considering the landlord named only the female tenant in this dispute, the female tenant did not appear at the hearing, the registered mail sent to the female tenant was returned as unclaimed, and the forwarding address written on the move-out inspection report was provided by the male tenant's brother without any indication he was acting on behalf of the female tenant, I find I am unsatisfied that the landlord sent the hearing package to the female tenant at either her forwarding address or her address of residence. Therefore, I find the landlord did not meet its burden to prove service occurred in a manner that meets the requirements of the Act and I dismiss the landlord's application 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: June 09, 2015

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Residential Tenancy Branch

