



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on February 11, 2015 seeking to obtain a Monetary Order for: unpaid rent or utilities; to keep all or part of the pet and or security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one appeared on behalf of the respondent Tenants.

### Issue(s) to be Decided

Has the Landlord proven each Tenant has been sufficiently served notice of this proceeding?

### Background and Evidence

The Landlord submitted evidence of a written tenancy agreement that was entered into with one Tenant, B.S. for a month to month tenancy which began on November 1, 2014.

The Landlord testified that on February 5, 2015 he received a forwarding address from the other named respondent, J.D. He could not confirm that J.D. and B.S. resided at the same forwarding address.

The Landlord submitted that he served each respondent Tenant with copies of his application and Notice of hearing documents via registered mail. One registered mail package was sent addressed to both respondents. The Canada Post tracking information had been archived so the Landlord could not confirm who signed receipt of the registered mail.

### Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

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*].

The Residential Tenancy Rules of Procedure 3.1 determines the method of service for hearing documents and stipulates that the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve **each** respondent with copies of the application and all hearing documents in accordance with the Act.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows:

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.*

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

In this case the tenancy agreement was entered into listing only one Tenant, B.S. Therefore, I conclude the other named respondent, J.D., was an occupant and not a tenant, pursuant to Policy Guideline 13.

In the absence of the respondent Tenant(s), the burden of proof of service of the application and hearing documents lies with the applicant Landlord. To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights.

The evidence was the Landlord sent copies of his application and Notice of Hearing document in only one registered mail package addressed to both named respondents, which is in breach of Rule of Procedure 3.1. That registered mail was sent to the

address which was provided by the occupant and there was insufficient evidence to prove the Tenant, B.S. also resided at that address.

Based on the above, I find there was insufficient evidence to prove the Tenant and Occupant were sufficiently served the application and Notice of this proceeding, as required by section 89 of the *Act*. Therefore, I dismiss the Landlord's application, with leave to reapply.

### Conclusion

The Landlord was not able to prove service of his application and his application was dismissed, with leave to reapply. This dismissal does not extend any time limits set forth in the *Residential Tenancy Act*.

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: August 25, 2015

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Residential Tenancy Branch

