



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Preliminary Issues

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

There was evidence before me that indicated the rental unit was being managed by a property management or realty company. The named respondents included the owner and a property manager who was an employee of the property management company. Accordingly, the style of cause was amended to include the corporate property management name, in accordance with section 64 (3)(c) of the Act.

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on May 28, 2015. The Tenant filed seeking to obtain a Monetary Order for: the return of double her security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant and the Tenant's boyfriend.

### Issue(s) to be Decided

1. Did the Tenant serve copies of her application to the Landlord in accordance with the Act?
2. If not, should this matter be dismissed with or without leave to reapply?

### Background and Evidence

The Landlords submitted evidence that the Tenant did not serve them with copies of her application and evidence until October 20, 2015. A copy of the Canada Post tracking website was submitted indicating the package was sent October 19, 2015 and delivered on October 20, 2015.

The Landlords argued that they did not receive the application and evidence in time for them to prepare a response. As such they requested the Tenant's application be dismissed.

The Tenant testified that she did not serve her application to the Landlord back in May 2015 because she was out of the Country. When asked why she did not serve the application the same day she filed it she replied that she had to leave Canada to attend to an emergency. No evidence was submitted to support when the Tenant actually left the Country.

### Analysis

Section 59(3) of the *Act* provides that except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The hearing package contains instructions and the deadlines on when and how to serve the respondents with copies of the application and Notice of hearing documents.

In this case, the Tenant filed her application for Dispute Resolution on May 28, 2015. She did not serve the Landlords with copies of her application or the Notice of a Dispute Resolution Hearing documents until October 19, 2015. The Landlord did not receive that package until October 20, 2015, thirteen days before the hearing.

In absence of proof of the exact date the Tenant left the Country, I find the Tenant served her application in breach of section 59(3) of the *Act*, leaving the Landlord inadequate time to prepare his response. Accordingly, I dismiss the Tenant's application, with leave to reapply.

Conclusion

The Tenant did not serve her application and evidence upon the Landlord within the required timeframes and as a result the application was dismissed, with leave to reapply. This dismissal does not extend any time limits specified in the *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: November 02, 2015

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Residential Tenancy Branch

