



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This was an application by a landlord for a monetary order representing compensation for damage to the unit and loss of revenue, an order to keep the security deposit and for recovery of the filing fee. All parties were represented at the conference call hearing.

### Issue(s) to be Decided

Is the landlord entitled to recover any compensation?

### Preliminary matters

At the outset of the hearing the tenant objected to the matter proceeding as he submitted he was not served with the application properly. The tenant testified that on or about the second week of September 2015 he received a copy of the landlord's application and the notice of hearing by text message. Shortly thereafter he received a package from the landlord by registered mail containing a copy of the landlord's application but without the notice of hearing contained therein. The tenant's advocate submitted that it was not until she called the RTB that the date of today's hearing was confirmed. The tenant testified that he was not ready to proceed and requested that the application be dismissed.

MG agent for the landlord testified that she did not send the package to the tenant and did not know what was in it but thought that the landlord had included everything that was required.

### Analysis

Section 89 of the Act provides:

**89** (1) 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;

(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)

I accept the tenant's uncontradicted evidence that the notice of hearing was only contained in the text message and that it was not contained in the package sent by the landlord by registered mail.

A notice of hearing is an essential component of the application for dispute resolution as it informs the party when and how the hearing of the application will take place. Section 89 of the Act does not permit service of the application by way of text message, and when the landlord used the prescribed method of registered mail she did not include the notice of hearing. Accordingly I find that the tenant was not served with the complete application for dispute resolution in accordance with section 89 and I must therefore dismiss the application with leave to reapply

### Conclusion

I have dismissed the landlord's application herein with leave to reapply. There will not be any recovery of the filing fee herein.

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 16, 2015

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Residential Tenancy Branch

