



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of his security deposit pursuant to section 38.

The landlord did not attend this hearing, although I waited until 1:15 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:00 p.m. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

### Preliminary Issue: Service

The tenant first testified that he was not sure and could not remember when and how he served the landlord with his Application for Dispute Resolution ("ADR"). After some thought, the tenant testified that he remembered serving the landlord with some evidentiary materials on or about April 4, 2016. After further thought, the tenant testified that he had served his Application for Dispute Resolution by placing it in the landlord's mailbox however he was uncertain of the date. I allowed the tenant time to consult his documentation and confirm his testimony at the hearing. However, the tenant stated that he was not aware that he would have to provide this type of evidence or at least would not be required to provide this level of detail about service (for example, the date of service).

The tenant did submit documentary evidence for this hearing but there was no materials submitted to sufficiently assist in proving the details of service of the documents to notify the landlord of this application and hearing. Based on the tenant's testimony, it did not appear that he was certain of the dispute resolution process regarding service of documents and proof of service.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process. Service of documents is restricted by timelines and methods of service to

underscore its importance. It is essential that a party be able to prove that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing.

Residential Tenancy Policy Guideline No. 12, with respect to the terms of service at section 88 to 90 in the *Act* states that, when the respondent (landlord) does not appear at a Dispute Resolution hearing, **the applicant must be prepared to prove service under oath**. The tenant provided uncertain testimony as to the details of service, particularly the date of service of the ADR including the Notice of Hearing.

Prior to considering the details of the applicant's claim, I must be satisfied that the tenant/applicant sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing.

Given the lack of detail and certainty in providing evidence with respect to service, I find that the tenant was unable to prove that the landlord was served with the dispute resolution documents and were therefore aware of this dispute resolution hearing. Therefore, I must dismiss the tenant's application.

### Conclusion

I dismiss the tenant'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: August 10, 2016

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Residential Tenancy Branch