



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF;   MNDC, MNSD, OLC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord and his agent, KG (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had authority to speak on his behalf at this hearing.

### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord was prepared to proceed with the tenant's application. In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

#### Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on May 30, 2016 by leaving a copy with an agent at a mail office, who was to deposit it directly into the tenant's PO Box.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads as follows (emphasis added):

*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;***

*(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].*

I find that the landlord has failed to demonstrate that the tenant was served in accordance with section 89(1) of the *Act*. Leaving a copy of the Application to be placed into a mailbox is not permitted under section 89 of the *Act*. The Application must actually be sent by registered mail. The tenant did not appear at this hearing to confirm that he received the Application.

During the hearing, I advised the landlord that I was unable to confirm service of his Application on the tenant. I notified the landlord that he was not entitled to recover the \$100.00 filing fee for his Application. I advised the landlord that the remainder of his Application was dismissed with leave to reapply.

I notified the landlord that he would be required to file a new application, pay a new filing fee and be prepared to prove service in accordance with section 89 of the *Act*, at the next hearing, if he wished to pursue this matter further against the tenant.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's Application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's Application is dismissed 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: November 16, 2016

---

Residential Tenancy Branch