



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNR, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary award, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord's agent AA ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was an employee of a property management company that worked for the landlord named in this application and that he had authority to speak on the landlord's behalf as an agent at this hearing.

### 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 on May 27, 2016 by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. The landlord said that he mailed the package to an address where he knows the tenant resides, as he has visited her there on a couple of occasions. The landlord said that the tenant received and signed for the package.

When I checked the Canada Post website using the tracking number provided by the landlord, I informed him that the website said that the package was sent out on May 26, 2016, and the person that signed for it had a different name than the tenant listed on the landlord's application. The landlord seemed confused by the above information.

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

*89 (1) An application for dispute resolution ..., 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** ...;*
- (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 failed to provide sufficient evidence that the tenant was served with the landlord's application at an address at which she was residing or a forwarding address provided by her, in accordance with section 89(1) of the *Act*. The tenant did not attend this hearing. The Canada Post tracking number provided by the landlord states that the package was mailed on the day before the landlord said that it was mailed. The package was signed for by someone other than the tenant. The landlord failed to provide documentary or witness evidence that the tenant provided that address to him or resided there.

As the landlord failed to prove service in accordance with section 89(1) of the *Act*, I find that the tenant was not served with the landlord's application. At the hearing, I advised the landlord that I was dismissing the landlord's Application with leave to reapply, with the exception of the \$100.00 filing fee. I notified the landlord that he would be required to file a new application and pay a new filing fee if he wished to pursue this matter further. I notified the landlord that he would have to prove service at the next hearing, regarding any forwarding or residential addresses obtained from the tenant.

### Conclusion

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. I make no findings on the merits of these claims. Leave to reapply is not an extension of any applicable limitation period.

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 28, 2016

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Residential Tenancy Branch

