



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The tenant applied 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; and
- authorization to obtain a return of her security deposit, pursuant to section 38.

The landlord did not attend this hearing, which lasted approximately 35 minutes. The “tenant” and her law student agent, KM (“tenant’s agent”) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Service of Tenant’s Application

The tenant’s agent testified the landlord was served with the tenant’s application for dispute resolution hearing package by way of mail. She said that she did not know whether it was sent by regular or registered mail. She said that it was served on November 24, 2016, despite the fact that it was filed on June 8, 2016. She said that the tenant spoke a different language so she did not know the service requirements. The tenant’s agent claimed that she did not have a Canada Post receipt or tracking number for the mailing. Both the tenant and her agent were given ample time during the hearing to look through their documents in order to locate evidence regarding service.

The tenant then claimed that she served the application to the landlord in person, with a witness. She did not provide a date for this service, saying that it was within three days of filing her application. She said that a friend witnessed the service. The tenant did not call the friend as a witness at this hearing or provide a witness statement from him.

As per section 59(3) of the *Act*, the tenant is required to serve her application upon the landlord within three days of making it. The tenant provided changing testimony regarding personal service of the application upon the landlord, with no specific date or witness evidence. The tenant could not confirm whether the application was served by regular or registered mail. Only registered mail is permitted under section 89 of the *Act*. The tenant failed to provide a tracking number for a registered mail service, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12. Therefore, I find that the landlord was not served with the tenant's Application as required under the *Act*.

At the hearing, I advised the tenant that her entire application was dismissed with leave to reapply. I notified the tenant that she could file a new application for dispute resolution and pay a new filing fee if she wished to pursue this matter further.

I notified the tenant that she would be required to prove service at the next hearing, including the date, method and proof of service, particularly a tracking number if sent by registered mail which requires a signature. I also notified the tenant that she would have to prove the current address for service of the landlord at the next hearing.

#### Conclusion

The tenant's entire 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 30, 2016

---

Residential Tenancy Branch