



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC MNR MNSD OPR FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on October 17, 2016. The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for compensation or monetary owed for damage or loss under the *Act*, regulation, or tenancy agreement; and to recover the cost of the filing fee.

The Landlord appeared at the teleconference hearing; however, no one appeared on behalf of the respondent Tenant.

### Issue(s) to be Decided

Has the Landlord proven each Tenant has been sufficiently served notice of this proceeding?

### Background and Evidence

At the outset of this proceeding the Landlord stated that the Tenants advised her during an October 12, 2016 hearing that they had vacated the property as of October 5, 2016.

The Landlord submitted documentary evidence which included, in part, copies of the Canada Post tracking receipts addressed to each Tenant at the rental unit address and dated October 19, 2016. The Landlord affirmed that she mailed copies of her application for Dispute Resolution and notice of hearing documents to each Tenant at the rental unit address. Those packages were returned to the Landlord and marked "refused".

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 89(1) of the *Act* stipulates that 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*].

[Reproduced as written with my emphasis in bold text]

In the absence of the respondent Tenants, the burden of proof of service of the application for Dispute Resolution and hearing documents lies with the applicant Landlord.

The Landlord testified that she served the Tenants the application and hearing documents to the rental unit address on October 19, 2016 which was 14 days after the Tenants vacated the property. In addition, the Landlord submitted the packages were returned marked "refused". Therefore, I find there was insufficient evidence to prove each Tenant was served with Notice of this proceeding to the address where they resided as required by section 89 of the *Act*.

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with section 89 of the *Act*, I dismiss the Landlord's application, with leave to reapply.

The Landlord was not successful with her application; therefore, I declined to award recovery of the filing fee.

### Conclusion

The Landlord's application was dismissed, with leave to reapply.

This decision is final, legally binding, and 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: December 08, 2016

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Residential Tenancy Branch