



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

The tenant applied for the return of his security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although the teleconference line remained open until 1:42 p.m. in order to allow the tenant to give evidence and to allow the landlord to join the teleconference hearing scheduled for 1:30 p.m.

### Preliminary Issue: Service of Documents

The tenant testified that he attempted to serve the landlord with the materials for this hearing by registered mail. He submitted copies of Canada Post registered mail receipts showing packages sent to the address provided by the landlord. The tenant testified that both packages for this hearing (the initial Application for Dispute Resolution package and his secondary evidence package) were sent by registered mail and were ultimately returned to the tenant.

The tenant testified that, after providing a security deposit for a rental unit to the landlord, he was no longer able to contact the landlord or move in to the rental unit. The tenant submitted a series of text messages illustrating his attempts to move in to his new apartment and, when he could not move in, to have his security deposit returned.

The tenant testified that he has been unable to reach the landlord since she agreed to return his security deposit. He testified that he has attempted to go to what he believed was her residence however he was told by the person at the residence that the landlord no longer resided at that address. The tenant also attempted to telephone and text message the landlord but he has had no response. The tenant testified that he had no

information to indicate where the landlord was residing or doing business as of the time that he sent his dispute resolution application by registered mail.

The tenant testified, supported by his documentary evidence that the landlord offered to return his deposit by e-transfer. He testified that he has not had any contact with the landlord and has had no return of his security deposit. The tenant testified that he does not know how he can serve the landlord with his application to recover his security deposit.

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 also essential that a party be able to prove that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing, including Notice of the Hearing.

Residential Tenancy Policy Guideline No. 12, in considering the terms of service at section 88 to 90 in the *Act* states that, when the respondents (in this case the landlord) do not appear at a Dispute Resolution hearing, the applicant (the tenant) must be prepared to prove service under oath. Prior to considering the details of the tenant/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. At this hearing, the tenant was not able to sufficiently prove that the landlord had been served with the ADR including the Notice of Hearing.

The tenant provided candid testimony that he had no certainty that either the residential address or business address where he attempted to serve the landlord were current or accurate. I find that the tenant's application is premature and that, in the circumstances, he would be required to apply for substituted service pursuant to section 71 of the *Act*.

Given the testimony of the tenant and his lack of knowledge as to the whereabouts of the landlord, I find that the tenant was unable to sufficiently satisfy the provisions regarding service within the *Act*. I find that the tenant was unable to prove that the landlord was served with the dispute resolution documents and therefore aware of this dispute resolution hearing. I find that the tenant has not proven service of documents for this hearing.

### Conclusion

I dismiss the tenant's application with leave to reapply. Any applicable timelines for this application will still apply.

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: April 18, 2017

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Residential Tenancy Branch