



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for return of the security deposit and pet damage deposit; and
- recovery of the filing fee paid for this application from the landlord.

The landlord did not appear at the teleconference hearing which lasted 40 minutes. The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The tenant testified that she sent the landlord a copy of the Notice of Hearing by registered mail to the landlord's address. The tenant testified that she sent the registered mailing to the landlord's address on March 21, 2017. The tenant did not provide a Canada Post Registered Mail receipt and she was unable to provide a Canada Post Registered Mail tracking number orally to support her testimony.

The tenant testified that she had made a previous application for the return of her security deposit and pet damage deposit and that a teleconference hearing was held on July 27, 2016. The file number for the previous hearing is indicated on the cover page for ease of reference. The landlord did not appear at the hearing although the landlord was deemed to have been served by registered mail. The tenant had provided the Canada Post tracking information at that time. The tenant's evidence established that an Order was made on July 29, 2016 granting the tenant double her security deposit and pet damage deposit. The tenant explained that the reason for this application is due

to the fact that she had used an incorrect last name for the landlord and was therefore unable to enforce the previous Order.

#### Analysis – Service of Tenant’s Application

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* establishes that the Applicant must, within 3 days of the hearing package being made available by the *Residential Tenancy Branch*, serve the Respondent with various documents set out in that section which include the Notice of Hearing.

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules of Procedure”) establishes that the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the hearing package and all evidence as required by the *Act* and these *Rules of Procedure*.

Residential Tenancy Policy Guideline #12 states that proof of service by registered mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person’s residence at the time of service, or the landlord’s place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

I find that there is insufficient evidence to establish proof of service of the Notice of Hearing to satisfy me that the landlord has been served in accordance with Rule 3.5 of the Rules of Procedure and section 89 of the *Act*. In making this finding I have taken into consideration the fact that the tenant did not submit a copy of the original Canada Post Registered Mail receipt, nor a copy of the printed tracking report in accordance with Policy Guideline #12. I have also taken into consideration the fact that the tenant was also not able to provide a Canada Post tracking number orally to confirm the mailing.

Given that the tenant sent her previous application to the landlord by registered mail using an incorrect last name for the landlord, the landlord cannot be deemed to have received notice of the previous hearing. Therefore, to be satisfied that the landlord received notice of this hearing, I find that the tenant must provide sufficient proof of service in accordance with Policy Guideline #12.

Based upon the foregoing, I dismiss the tenant’s application with leave to reapply due to insufficient proof of service. This decision does not extend any applicable time limits under the *Act*.

Conclusion

The tenant's application is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

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: May 08, 2017

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Residential Tenancy Branch