



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction and Analysis

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order of \$400.00 for the of their security deposit.

The tenant M.B. (the "tenant") attended the teleconference hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail in January 2017. The tenant originally did not have the registered mail tracking number to provide in evidence so the tenant was given a few minutes to call the co-tenant applicant to retrieve the registered mail tracking number. Once the registered mail tracking number was provided a few minutes later, the undersigned arbitrator checked the online registered mail tracking website which indicated that the tenants did not mail the registered mail package until March 8, 2017 which is over three months after the tenants were required to serve the landlord by December 3, 2016.

In the tenants' file, a copy of the instructions they received is there and reads in part:

**"...Notice of Hearing Documents to be served no later than: Dec 3, 2016..."**

[Reproduced as written]

In addition, Rules 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

### **3.1 Documents that must be served with the hearing package**

**The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:**

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

Reproduced as written]

In the matter before me, the tenants not only failed to comply with the Rules by waiting over three months to mail a registered mail package to the landlord, I also find the testimony of the tenant to be inconsistent as the tenant originally testified that he did not serve until January because he was busy with a new job and then changed his testimony to March. When I advised the tenant that the tracking information was not consistent with his testimony, the tenant laughed.

Both parties have the right to a fair hearing. The landlord would not be aware of the hearing without having received the Notice of a Dispute Resolution Hearing and Application. Furthermore, the Rules are not mere suggestions, they must be complied with and in the matter before me, the tenants failed to comply with the Rules. Therefore, I am not satisfied that the landlord has been properly served in accordance with the Rules.

**I dismiss** the tenants' application **with leave to reapply** due to a service issue. I note this decision does not extend any applicable time limits under the *Act*.

**I caution** the tenants to comply with the Rules in the future.

### Conclusion

The tenants' application is dismissed with leave to reapply due to a service issue.

This decision does not extend any applicable time limits under the *Act*.

The tenants are cautioned to comply with the Rules in the future.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: May 30, 2017

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Residential Tenancy Branch