



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNDCL, MNRL-S, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and other money owed, retention of the Tenant’s security deposit against the rent owed, recovery of the filing fee, and an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I inquired with the Landlord regarding service of these documents as explained below.

The Agent testified that she sent the Notice of Hearing and a copy of the Application to the Tenant at her rental unit by registered mail on January 17, 2018, and provided me with the registered mail tracking number. The Landlord stated that as the Tenant lives in a single room occupancy unit, they do not have a designated mailbox and all mail comes to the main mailbox for the building, to which only the Landlord and the agents for the Landlord have access. The Agent stated that when the registered mail delivery notice was received in the mailbox for the Tenant, she slipped it under the door of the Tenant’s rental unit.

With permission of the Agent, I logged onto the mail service provider's website and viewed the registered mail tracking information. The tracking information shows that the registered mail was sent January 17, 2018, and that it was never picked up. It also shows that the mail could not be returned to sender as it could not be delivered as addressed.

The Agent also testified that there is an error on the Application as the unit number for the tenant's address is incorrect. The Agent further testified that despite this error, the registered mail was sent to the correct address and the registered mail pick-up notice was placed under the correct door.

Section 59 of the Act states the following with regards to the service of the Application on the Respondent:

### **Starting proceedings**

- 59** (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 88 of the Act states the following with regards to the service of documents in general:

### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Section 89 of the Act states the following with regards to the service of certain documents:

### **Special rules for certain documents**

**89** (1) 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*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Although the Agent sent the Application and Notice of Hearing by registered mail, it was never picked-up by the Tenant and the notice for pick-up went to a general mailbox for the building, not an individual mailbox for the Tenant's rental unit. Although the Landlord testified that she slipped the pick-up notice under the Tenant's door, I find that this is not an acceptable form of service under either section 88 or section 89 of the *Act*. Further to this, the Agent testified that the Application lists the incorrect unit number for the Tenant, and as I do not have a copy of the registered mail address label in the documentary evidence before me, I find that I cannot be satisfied that the registered mail was in fact addressed to the Tenant's rental unit. Based on the above, the Agent has not satisfied me on a balance of probabilities that the Tenant was served with a copy of the Application and the Notice of Hearing in accordance with the *Act* and the Rules of Procedure.

The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Tenant was not served with the Application or the Notice of Hearing, I find that they did not have a fair opportunity to know the case against them or appear at the hearing in their defense. As a result, the Application is dismissed with leave to reapply.

As the Landlord's Application is dismissed, I decline to grant them recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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: March 13, 2018

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Residential Tenancy Branch