



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was originally scheduled to take place at 3:00 p.m. on March 28, 2018, via teleconference call, to deal with the landlord's application for a Monetary Order against the tenants for unpaid rent and/or utilities; damage to the rental unit or property; and, authorization to retain the security deposit and/or pet damage deposit. On March 28, 2018 the landlord appeared for the hearing but, due to errors on part of the Residential Tenancy Branch, there was no appearance by an Arbitrator. The hearing was rescheduled to April 3, 2018. Staff persons from the Residential Tenancy Branch placed telephone calls to the landlord to advise the landlord of the rescheduled hearing. Multiple telephone calls and voice mail messages were left on the tenant's telephone number that the landlord had provided on the Application for Dispute Resolution with respect to a rescheduled hearing but there was no response from the tenants.

At the rescheduled hearing of April 3, 2018 only the landlord appeared. Since the tenants were not in attendance at either of the scheduled hearings, I proceeded to explore service of the hearing documents upon the tenants by the landlord.

The landlord testified that he sent the hearing documents to each tenant via registered mail on September 8, 2017. The landlord orally provided two registered mail tracking numbers as proof of service. A search of the tracking numbers showed that a person other than the tenants received the registered mail. I asked the landlord whether he recognized the name of the person who received the registered mail and he said he did not know who that person was. I proceeded to explore the service address the landlord used to send the registered mail.

The landlord testified that the two tenants had been a couple during the tenancy but he understood they broke up and the male tenant remained in the rental unit. The landlord was unsuccessful in communicating with the male tenant via text message or email after the male tenant moved out of the rental unit and could not obtain his forwarding address or new address of residence.

The landlord testified that he found out where the female tenant lived after speaking with a neighbour and he telephoned the female tenant and then wrote her a letter seeking reimbursement for the landlord's losses but he received no response from her. I noted that in the landlord's details of dispute the landlord submitted that he merely found the female tenant's telephone number and then wrote her a letter, without indicating he spoke with the tenant or describe how he determined her address of residence. Upon further probing, the landlord testified that he determined the female tenant's telephone number first and then in a phone conversation with the tenant she provided the landlord with her address. It is uncertain as to whether the landlord provided the male tenant's or the female tenant's telephone number on the landlord's Application for Dispute Resolution but I note the landlord provided what appeared to be the male tenant's email address.

As provided in Residential Tenancy Branch Policy Guideline 12: *Service Provisions*, where a respondent does not appear at the hearing, the applicant bears the burden to prove that service occurred in manner that complies with the Act. Where a landlord serves a tenant by registered mail, the address for service must be the tenant's address of residence at the time of mailing or the forwarding address provided by the tenant. Section 15 of the policy guideline further provides, in part:

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...as well as a copy of the printed tracking report.

Dispute resolution proceedings are based on the principles of natural justice, which means a respondent has the right to be notified of the claims against them so that they may provide a defence or response. This is one of the primary purposes of serving a respondent with an Application for Dispute Resolution and Notice of Hearing.

In consideration of the evidence before me, I was unsatisfied that the landlord used a service address that was the male tenant's address of residence or forwarding address. Accordingly, I found the male tenant was not sufficiently served with notification of the

claims against him and I informed the landlord that I would exclude the male tenant as a named party to this dispute. In response, the landlord indicated that he wished to proceed against the female tenant.

Although the landlord did not provide a copy of the registered mail receipt, or evidence to corroborate the address used for service was the female tenant's address of residence, I proceeded to hear the landlord's claims against the female tenant.

As the hearing proceeded, I noted a number of discrepancies and inconsistencies with the landlord's testimony and evidence. For example, the landlord testified twice that the male tenant moved out of the rental unit at the end of February 2017 yet the landlord's written submission was that the male tenant moved out on January 29, 2017 and the receipt for garbage disposal was dated January 31, 2017. The landlord also made a claim for unpaid utilities of \$214.44 and produced a utility bill for the period of October 25, 2016 through January 24, 2017 for this amount; however, during the hearing, the landlord testified that the tenants had been paying an extra \$100.00 per month for these utilities. The landlord stated the tenants failed to pay the last month's rent payment on January 15, 2017 and when I asked whether that would mean the tenants owed \$100.00 for utilities, the landlord changed his testimony to say the tenants had not paid the extra \$100.00 per month for the utilities for a couple of months. Also, the landlord submitted that the tenants were required to pay rent on the 15<sup>th</sup> day of every month; that the tenants failed to pay rent of \$1,131.90 that was due on January 15, 2017; and, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent on January 16, 2017. Yet, the landlord produced a 10 Day Notice dated January 8, 2016 indicating rent of \$400.00 was outstanding on January 1, 2016. I also noted that the landlord had not requested recovery of outstanding rent on the Monetary Order worksheet but had included it in the letter he wrote to the female tenant on June 15, 2017. When I pointed out the above discrepancies to the landlord his response was that he made mistakes.

Given all of the discrepancies in the landlord's testimony and evidence, I find I cannot rely solely upon the landlord's oral testimony that he obtained and used the female tenant's address of residence to serve her with notification of these claims. Therefore, I find I am unsatisfied that the female tenant was served with notification of the hearing documents in a manner that complies with the Act.

In light of the above, I decline to further consider the landlord's application and I dismiss the landlord's claims against both tenants with leave to reapply.

With respect to the security deposit and pet damage deposit, I have not authorized the landlord to retain the deposits because I did not proceed with the landlord's claims. However, I make no order that the landlord return the deposits to the tenants since there is no evidence to suggest the tenants gave the landlord a forwarding address in writing within one year of the tenancy ending as provided under section 39 of 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: April 04, 2018

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Residential Tenancy Branch