



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

The Tenant has made an application for dispute resolution (the “Application”) for the return of a security deposit paid to the Landlord, who rented premises to him.

The applicable legislation, rules and guidelines have specific requirements pertaining to service of a hearing notice. This is to ensure that all parties are aware of the claim and have opportunity to respond. The applicant has the burden of proving service at the hearing, under paragraph 3.5 of the Rules of Procedure:

### ***3.5 Proof of service required at the dispute resolution hearing***

*At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.*

There are several prescribed methods of service that are permissible, as outlined in section 89 of the Act:

**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).*

Further particulars on to how to carry out service are provided in Policy Guideline 12, at paragraph 4:

***i. Personal service***

*o Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord...*

*This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.*

***ii. Registered Mail***

*o Where a tenant is serving a landlord by Registered Mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord...*

The Tenant has the burden of proving service by one of these methods, as considered in paragraph 15 of the Policy Guideline:

*Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.*

*Where proof of service is required, the person who actually served the documents must either:*

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

*Proof of service **personally** should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

*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.*

*Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.*

I find that the Tenant has failed to satisfy me that the Landlord has been properly served with notice of this hearing, as there is no evidence that the package was signed for delivery by the Landlord, nor that it was eventually delivered to his attention. The packages were not sent to the Landlord's residence, but rather, to two places where he was thought to be employed. Accordingly, I am not in a position to hear the merits of the claim and I make no finding with respect to substance of this Application. The Tenant's Application will be dismissed with leave to apply.

Issue(s) to be Decided

Is the Tenant entitled to a return of a security deposit in the sum of \$350.00, pursuant to section 38 of the Act?

Is the Tenant entitled to the filing fee of \$100.00, pursuant to section 72 of the Act?

Conclusion

As the notice of hearing was not properly served on the Landlord, I hereby dismiss the Tenant's application, with leave to re-apply. I make no finding of fact with respect to the issues noted above.

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 25, 2018

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Residential Tenancy Branch