



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 25, 2018 (the "Application"). The Tenant sought compensation under section 51 of the *Residential Tenancy Act* (the "*Act*"). The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord did not appear. I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and Tenant's evidence.

On the Application, the Tenant had indicated he did not have the Landlord's address. During the hearing, the Tenant testified that he sent the hearing package and evidence to the Landlord by registered mail to the rental unit on October 1, 2018. He said he does not have the Landlord's address as she never provided it to him. The Tenant said the Landlord did have mail sent to the rental unit while he was there. However, he said he would leave the mail for the Landlord at the rental unit and did not know whether the Landlord picked it up or if it was returned to the sender.

The Tenant provided Tracking Number 1 as noted on the front page of this decision. With permission, I looked this up on the Canada Post website. The website states the package was delivered to the "community mailbox, parcel locker or apt./condo mailbox".

The Tenant had submitted evidence which includes a photo of the lot where the rental unit previously was showing the rental unit had been demolished as of August 14, 2018.

Section 59(3) of the *Act* requires an applicant to serve a copy of the Application for Dispute Resolution on the respondent within three days of it being filed.

The Application had to be served on the Landlord in accordance with section 89(1) of the *Act* which states:

89 (1) An application for dispute resolution...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].

Rule 3.1 of the Rules of Procedure (the “Rules”) requires that the hearing package and evidence be served on a respondent.

Rule 3.5 of the Rules states that, “[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”.

The purpose of service is to put respondents on notice of the hearing and give them an opportunity to respond to the claims made against them. The service of documents to a respondent is essential and imperative if natural justice and procedural fairness are to be followed.

I am not satisfied based on the evidence before me that the Landlord was served with the hearing package and evidence in accordance with the *Act* and Rules. I accept that the Tenant sent the hearing package and evidence to the rental unit; however, I cannot find that this is the address of the Landlord. I am not satisfied that the Landlord told the Tenant he could use the rental unit address as her address. The rental unit had been demolished at the time the package was sent. The Canada Post website information does not satisfy me that the package was in fact sent to the rental unit which makes sense given the rental unit is no longer there. The Canada Post website information does not confirm that the Landlord received the package.

In the circumstances, I cannot find that the Landlord was served with the hearing package and evidence. Given this, I dismiss the Application.

During the hearing, I told the Tenant I would reserve my decision about service to my written decision and heard him on the Application. He confirmed that the Landlord had given him a handwritten letter stating it was two months and 15 days notice to vacate as she was moving into the rental unit. He confirmed he was not served with a notice to end tenancy on an RTB form. He said he called the RTB about this and was told it was not a valid notice to end tenancy. He confirmed he did not dispute the notice.

The letter served on the Tenant is not a valid notice to tenancy issued pursuant to section 49 of the *Act* as it does not comply with section 52 of the *Act* which requires a notice to end tenancy to be in the approved form. In my view, a tenant is only entitled to compensation under section 51 of the *Act* when they have been served with a proper notice issued under section 49 of the *Act*. Here, the Tenant was not served with a proper notice and therefore is not entitled to the compensation requested despite the Landlord not moving into the rental unit. In the circumstances, I dismiss the Application without leave to re-apply as the Tenant would not be successful in seeking compensation under section 51 of the *Act*.

#### Conclusion

I am not satisfied the Landlord was served with the hearing package and evidence in accordance with the *Act* and Rules. Given this, I dismiss the Application.

I find the Tenant would not be successful in seeking compensation under section 51 of the *Act* in any event and therefore dismiss the Application without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 16, 2018

---

Residential Tenancy Branch