



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: FFL, MNDL-S, MNRL

### **Introduction**

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$4150 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The Tenant failed to appear at the scheduled start of the hearing which was 1:30 p.m. on October 22, 2018. The landlord was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenants failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The Landlord was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

The applicant testified that her father served the Application for Dispute Resolution/Notice of Hearing on the Tenant by leaving it in his mailbox. She further testified he served it by registered mail to where the Tenant resides. However, her father did not attend the hearing or provide evidence of service. She was not able to provide a copy of the registered mail receipt.

The Residential Tenancy Act provides that where a party is seeking a monetary order it must be served either by personal service or by registered mail to where the respondent resides or if the respondent is a tenant by registered mail to the respondent's forwarding address.

Policy Guideline #12 includes the following:

“15. PROOF OF SERVICE

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.

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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.”

#### Analysis:

I determined the landlord has failed to prove that she has sufficiently served the tenant in accordance with the Residential Tenancy Act. Her father did not attend the hearing or provide evidence of service. Leaving a copy of the Application for Dispute Resolution in the mail box of the respondent does not amount to personal service. The landlord failed to provide a copy of the registered mail receipt. Finally, the landlord testified she did not serve the Notice of Rescheduled Hearing on the Tenant.

One of the fundamental principles of our legal system is that a respondent must be sufficiently served before the hearing can proceed. The landlord failed to prove sufficient service.

As a result **I order the application dismissed with liberty to reapply.** I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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: October 22, 2018

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Residential Tenancy Branch