



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, OLC, FFT

### Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on September 6, 2018. The tenant seeks the following remedies under the Act:

1. a monetary order for damage or compensation;
2. an order for the landlord to comply with the Act, regulations, or the tenancy agreement; and,
3. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened on October 23, 2018. The tenant and the landlord attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

### Preliminary Issue: Service

The tenant testified that he served the landlord with the Notice of Dispute Resolution Proceeding package, along with all additional and relevant documentary evidence, by attaching it to the landlord's door. The landlord testified that he never received the tenant's evidence.

The tenant further testified that he attached an envelope containing a USB stick (that included the evidence submitted for the hearing) to the landlord's door at the address listed in both the written tenancy agreement (titled "Rental Agreement") and in a land titles search document, both of which were submitted into evidence. I note that the landlord's address for service in the Rental Agreement is the same address as the rental unit.

### Analysis

Section 59(3) of the Act states that “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.”

Further, Rule 3.1 of the *Rules of Procedure* requires that an applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve the other party with “any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5.”

Rule 2.5 of the *Rules of Procedure* requires that the applicant provide copies of all documentary and digital evidence to be relied on in the proceeding to the other party.

Under section 89(1) of the Act, a Notice of Dispute Resolution Proceeding *must* be 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 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)

The tenant testified that he posted the Notice (and then the evidence) to the door of the landlord’s address as listed in the land titles search and the Rental Agreement. Posting the Notice, and the evidence, on the landlord’s door is not an acceptable method of service under the Act.

Section 89(1), and the methods of service required therein, ensure that a respondent in a dispute resolution proceeding has the opportunity to have a fair hearing. By not serving a respondent in accordance with the Act, a respondent does not have the ability

to review and respond to the evidence being submitted by an applicant. Without this ability, the respondent is left in the unenviable position of trying to defend a claim against which he does not have all the information and documentary evidence being submitted by an applicant in pursuit of his or her claim. To allow a dispute to move forward in this situation would violate the rules of procedural fairness and natural justice.

Based on the evidence of the parties, I find that the tenant failed to serve the landlord with either the Notice of Dispute Resolution Proceeding package or all his evidence in compliance with the Act. As such, I dismiss the tenant's application with leave to reapply.

Should the tenant reapply for dispute resolution, he must ensure that all the evidence he intends to submit, and rely on, is served on the landlord in compliance with the Act (specifically, section 89(1)) and the *Rules of Procedure* (specifically, Rules 2.5, 3.1, 3.5, 3.16, and 3.17). The landlord is likewise encouraged to become familiar with this section of the Act and the above-noted Rules.

### Conclusion

I dismiss the tenant's application with leave to reapply.

I make no findings of fact or law in regard to the underlying issues of this dispute.

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 23, 2018

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Residential Tenancy Branch