



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDCL-S MNDL-S

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

### **Preliminary Issue - Service of the Application for Dispute Resolution**

The tenant testified in the hearing that he had never received the landlord's Application for Dispute Resolution Package. The tenant testified that he had obtained the hearing information by calling the Residential Tenancy Branch, and as a result of not receiving the Dispute Resolution Package, the tenant was unable to prepare for the hearing or respond to the landlord's application.

The landlord testified during the hearing that the tenant was served the application package by way of registered mail to an address she had previously known as the tenant's forwarding address. The package was returned to the sender as undeliverable. The tenant testified that he was only at that address briefly, and the address was never provided to the landlord as a forwarding address.

Section 89 of the *Act* establishes the following special rules for service of documents.

***Special rules for certain documents***

**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) [director's orders: delivery and service of documents].*

As there is conflicting information about the provision of the tenant's forwarding address, and as I find that the landlord has failed to provide sufficient evidence to support that the tenant was served in a manner required by Section 89 of the *Act*, the landlord's application is dismissed with leave to reapply.

As both parties were present in the hearing, the tenant's address at which he may be served was confirmed during the hearing.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

**Conclusion**

I dismiss the landlord's application to recover the filing fee without leave to reapply.

I dismiss landlord's application for damages and monetary losses associated with this tenancy with leave to reapply.

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: September 13, 2018

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Residential Tenancy Branch