



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to section 58 of the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on July 27, 2018, by way of registered mail to two different addresses. The landlord provided two Canada Post tracking numbers verbally during the hearing.

When I questioned the landlord as to what addresses her application was sent to, she said it was an address where she thought the tenant was living and the tenant's place of employment. She claimed that the application sent to the residential address was returned back to her but the other application sent to the employment address was not sent back so she assumed the tenant received it. She said that she found the tenant's addresses on an online social networking site. She did not provide documentary proof of same. She stated that the tenant was evading service and did not provide her with any residential or forwarding addresses where she could be served.

When I looked up the Canada Post tracking number provided by the landlord on the Canada Post website, it indicated that the package sent to the residential address was returned to the landlord sender because on August 1, 2018 it stated: "Recipient not located at address provided. Item being returned to sender."

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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

I find that the landlord was unable to show that the addresses where the landlord sent her application was a residential address or a forwarding address provided by the tenant. One mail package was returned to sender because the Canada Post website indicates that the recipient could not be found at that address. That address was not provided by the tenant, the landlord does not know whether she lives there, and she found that information online but did not provide proof of same. The other mail package was sent to an employment address, which is not permitted by section 89 of the *Act*. The tenant did not appear at this hearing to confirm receipt of the application.

Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the *Act* and the tenant was not served with the landlord's application.

At the hearing, I informed the landlord and her husband that I was dismissing the landlord's application with leave to reapply, except for the filing fee. I notified the landlord that she would be required to file a new application and pay a new filing fee, if she wishes to pursue this matter further. I cautioned the landlord that she would have to prove service at the next hearing, including documentary evidence of the tenant's forwarding or residential address.

For the landlord's information, and since she did not provide copies of the registered mail receipts or tracking reports, RTB Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*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**.*

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed 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: November 27, 2018

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Residential Tenancy Branch