



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL FFL

### Introduction

This hearing was convened pursuant to the landlord's application filed August 03, 2018 under the *Residential Tenancy Act* (the Act) for a monetary order and to recover their filing fee. The landlord and the tenant attended the teleconference hearing.

#### *Preliminary Issue – Service of Documents – Starting proceedings*

At the outset of the hearing the landlord stated they did not send the tenant the Notice of Dispute Resolution Proceeding (Notice of Hearing) and application of this matter until mid-November 2018, after being reminded of this matter via an auto-generated e-mail from the Branch. The landlord acknowledged receiving the Notice of Hearing package in early August 2018, with the accompanying instructions as to service of the package on the respondent. The tenant testified they did not receive any notice of this proceeding until over 3 months later, November 18, 2018 and immediately submitted some evidence into the Branch service portal but was unable to serve the landlord with the same evidence, which in part was described to the landlord as a receipt indicating the tenant had paid the amount for which the landlord is claiming in their application. The tenant confirmed they recently received the landlord's evidence. However, the landlord was not agreeable to considering the tenant's submission, despite acknowledging they likely contributed to not receiving it.

I find that in respect to Dispute Resolution Proceedings, **Section 59** the Act, in part relevant to this matter states as follows, **(emphasis added)**

#### **Starting proceedings**

**59** (3) 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.

I find that the landlord did not serve the tenant with Notice of this hearing and their application as prescribed by the Act and as a result prejudiced the tenant's ability to defend the landlord's claims made against them.

As a result of the above I **dismiss** the landlord's application without leave to reapply.

**Conclusion**

The landlord's monetary application is dismissed without leave to reapply.

**This Decision is final and binding.**

*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: December 04, 2018

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Residential Tenancy Branch