



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD MNDCT FFT

### Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The tenant, and the tenant's assistant H.B., attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:03 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding documents for this Application. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant confirmed that he had applied for dispute resolution in this matter on August 29, 2018, and that he received the Notice of Dispute Resolution Proceeding package from the Residential Tenancy Branch on September 5, 2018. The tenant testified that he personally served the landlord's agent at the landlord's address for service on December 20, 2018, with the Notice of Dispute Resolution Proceeding package and his evidence.

When questioned as to why he waited over three months to serve the landlord with the Notice of Dispute Resolution and his evidence, the tenant testified that he was not aware that he was required to serve the landlord with these documents when he made his Application, and only learned of this requirement in December 2018.

I note that under the “General Information” section of the Notice of Dispute Resolution Proceeding provided to the tenant, it states:

*Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure sets out the requirement for an applicant to serve the respondent **within three days** of the Notice of Dispute Resolution Proceeding package being made available, as follows:

*The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
- d) 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 [Documents that must be submitted with an Application for Dispute Resolution].*

This is further set out in the legislation under section 59(3) of the *Act*, which states, in part, that “...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...”.

The tenant, who is the applicant in this matter, waited over three months to serve the landlord with the Notice of Dispute Resolution and evidence for this hearing, and as a result, the landlord was provided with only two weeks notice prior to the hearing date of January 4, 2019, and during a period of time where several of these days were statutory holidays. I find this delay to be unreasonable and prejudicial to the respondent’s ability to respond to the tenant’s Application.

As such, I order the tenant's Application for the return of the security deposit and monetary compensation dismissed with leave to reapply, due to his failure to serve the Notice of Dispute Resolution Proceeding in accordance with the *Act* and the Rules of Procedure. I make no findings on the merits of the matter. The issuance of this decision with leave to reapply does not extend any applicable time limits under the *Act*.

Regarding the tenant's request to recover the cost of the filing fee for this Application, I find that this claim is dismissed without leave to reapply. Should the tenant decide to reapply, he will be required to file a new application and pay a new filing fee.

### Conclusion

The tenant's Application is dismissed with leave to reapply due to his failure to serve the notice of this hearing in accordance with the *Act* and the Rules of Procedure. This decision does not extend any applicable time limits under the *Act*.

The tenant's request to recover the \$100.00 filing fee is dismissed without 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: January 04, 2019

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Residential Tenancy Branch