



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on August 28, 2018. The tenants sought the following remedies:

1. an order for compensation for the return of their security deposit, pursuant to sections 38(1)(c) and 67 of the Act; and,
2. an order for compensation for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on January 11, 2019, and one tenant attended. The landlord did not attend.

### Preliminary Issue: Service of the Notice of Dispute Resolution Package

In reviewing the manner in which the Notice of Dispute Resolution Proceeding package was served on the landlord, the tenant testified that the Notice of Dispute Resolution Proceeding package (the "Notice") was served by e-mail in August or September 2018, but was unable to provide an exact date, nor was he able to provide any evidence, oral or documentary, confirming that the landlord had in fact received the Notice.

As I explained to the tenant, there are a limited numbers of ways that the Notice (and supporting evidence) must be served, or given, to the other side. Section 89 of the Act covers those methods, and I reproduce that section of the Act below:

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)

As I also explained to the tenant, where there is incontrovertible proof of the respondent receiving the Notice by alternate means (such as e-mail), then an arbitrator has the discretion under section 71 to find that service was executed. In this case, however, there was no evidence that the landlord had received the Notice. Finally, I explained that proper service ensures that the respondent has an opportunity to defend the claim.

Pursuant to Rule 3.5 of the *Rules of Procedure*, under the Act, an arbitrator must be satisfied that each respondent was served with the Notice and all evidence as required by the Act. Where the applicant cannot demonstrate that this was done the arbitrator may dismiss the applicant's application, with or without leave to reapply.

### Conclusion

I dismiss the tenants' application 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 Act.

Dated: January 11, 2019

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Residential Tenancy Branch