



# Dispute Resolution Services

Page: 1

## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding PETER WALL YALETOWN  
and [tenant name suppressed to protect privacy]

### **DECISION**

**Dispute Codes:** FFL 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.

While the landlord's agents, VS and SD ('landlord'), attended the hearing by way of conference call, the tenant did not. I waited until 1:40 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord's agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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

The landlord's agents testified that the tenant was served the application package by way of registered mail. The tracking information provided in the landlords evidentiary materials show that the package was sent to the rental address from which the tenant moved. The package was sent on October 17, 2018, and the landlord's application states that the tenant moved on September 28, 2018. The package was returned to the sender as it was not delivered to the tenant. The landlord's agents testified that the tenants never provided a forwarding address to them when the tenant moved out.

The landlord's agents testified in the hearing that the package was sent to the tenant before the tenant moved, but could not confirm the specific date.

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].*

I find that the evidence provided by the landlord's agents is not sufficient to satisfy me that the tenant was served with the landlord's application. I find that the landlord did not have the tenant's forwarding address, and the package was sent to the rental address from which the tenant moved. The package was not received by the tenant according to the tracking information provided. As the tenant was not in attendance at the hearing, I could not confirm directly with the tenant that he was served with the landlord's application. I find that the landlord has not met the requirements of section 89 of the *Act* for service of their Application. Accordingly, I dismiss the landlord's entire application with leave to reapply.

**Conclusion**

I dismiss the landlord's entire application for dispute resolution 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: February 12, 2019

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Residential Tenancy Branch