



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* ("Act"), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 25 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant stated that he served the landlord with the tenant's application for dispute resolution hearing package by way of registered mail to the rental unit address. Initially, he stated that he served it on October 30, 2018, then he claimed it was November 2, 2018. The Canada Post receipt and tracking number provided by the tenant with his application, indicates it was sent on October 31, 2018. The tenant was unable to confirm the Canada Post tracking number during the hearing because he said that he did not have the paperwork in front of him during the hearing. The tenant was provided with 25 minutes of hearing time to locate his evidence and provide testimony.

When I asked the tenant which address he sent the mail to, he said it was where the landlord was living. The tenant provided a number of text messages, claiming they were from the landlord. The text messages indicate that the landlord told the tenant the rental unit address where the tenant would be residing if he rented the unit, not where the landlord was living.

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].*

Residential Tenancy 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**.*

I find that the tenant was unable to show that the address where he sent his application was a residential address or an address where the landlord was carrying on business. It was sent to the rental unit address. The mail was returned to sender, as claimed by the tenant. The landlord did not appear at this hearing to confirm receipt of the application. The tenant was also unable to confirm the exact date of service, as well as the tracking number for the registered mailing.

I find that the landlord was not served with the tenant's application as per section 89 of the *Act*. I notified the tenant that his application was dismissed with leave to reapply,

except for the filing fee. I informed him that he would be required to file a new application, pay another filing fee and provide proof of service at the next hearing, if he chooses to pursue this matter further.

I notified the tenant that he could speak to a lawyer for legal advice, obtain assistance from legal aid if he could not afford a lawyer, or contact the tenant advisory centre. I also informed him that he could contact the police if this was a case of fraud by the landlord.

### Conclusion

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

The remainder of the tenant'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: February 25, 2019

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Residential Tenancy Branch