



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREEN URBAN DEVELOPMENT  
LIMITED and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL MNDL MNRL FFL

### Introduction

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

- a monetary order for unpaid rent and compensation for damages pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. Landlord's agent S.S. (herein referred to as "the landlord") attended the hearing on behalf of the corporate landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

### Preliminary Issue – Service of Notice of Dispute Resolution Proceeding Documents

As only the landlord attended the hearing, I asked him to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding package for this hearing.

The landlord testified that the tenants had provided him with their forwarding address by text message on October 30, 2018 and that the tenants vacated the rental property around November 10, 2018. The landlord testified that on November 23, 2018, he attended at the tenants' forwarding address and left two individually addressed Notice of

Dispute Resolution Proceeding packages for the tenants on their porch in front of their door, as no one answered the door to the house.

Where a respondent is not at the hearing, the applicant bears the burden to prove the respondent was served with notification of the hearing and the claims against them.

Since this application pertains to a monetary claim by a landlord against a tenant, the only methods of service that are permissible, as outlined in section 89(1) of the Act, are as follows:

- personal service;
- registered mail; or
- as ordered by the director (or director's representative) for the Residential Tenancy Branch.

Further particulars on to how to carry out service are provided in Residential Tenancy Policy Guideline 12. Service Provisions, in Part 4:

***i. Personal service***

*o Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord...*

*This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.*

***ii. Registered Mail***

*o Where a tenant is serving a landlord by Registered Mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord...*

The landlord has the burden of proving service by one of these methods, as explained in Part 15 of Policy Guideline 12, as follows:

*Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package.*

*...*

*Where proof of service is required, the person who actually served the documents must either:*

- *be available as a witness in the hearing to prove service, or*
- *provide a signed statement with the details of how the documents were served.*

*Proof of service **personally** should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

*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.*

*Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.*

In this case, I find that the landlord failed to establish that the tenants were served with notification of this proceeding in a manner that complies with section 89(1) of the *Act*. Therefore, I order this application dismissed, and grant the landlord liberty to reapply. 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*.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Conclusion

As the notice of this hearing was not served on the tenants in accordance with section 89 of the *Act*, I dismiss this application, but grant the landlord liberty 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: March 13, 2019

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Residential Tenancy Branch