



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL –S, MNRL –S, MNDCL –S, FFL

### Introduction

This hearing was scheduled for a teleconference call to deal with a landlord's application for a Monetary Order for unpaid rent, damage to the rental unit, and other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit.

### Preliminary and Procedural Matters

When the hearing commenced neither the landlord nor the tenant was on the telephone line. The landlord appeared a few minutes later and since there was no appearance on part of the tenant I proceeded to explore service of hearing documents upon the tenant.

The landlord testified that he personally served the tenant with the proceeding package the day after he filed his Application while the tenant was still residing in the rental unit.

I noted that the landlord had filed his Application on January 15, 2019 but had not prepared a Monetary Order worksheet until April 23, 2019 which he uploaded to the Residential Tenancy Branch until April 25, 2019, along with evidence. The landlord had also uploaded evidence on April 9, 2019 but no evidence was provided at the time of filing. I asked the landlord how he served the documents he uploaded in April 2019 to the tenant. The landlord appeared rather evasive as to how these documents were served to the tenant. He said a few times that it was sent by registered mail but when I pressed him for date of mailing or tracking number he stated he could not find the receipt. I asked whether he knew where the tenant moved to after the tenancy ended and he stated he did not. The landlord also stated that the tenant resided in the rental unit until March 2019 when the bailiffs removed her; however, I noted that the invoice from the bailiff indicated the tenant was removed on January 21, 2019.

In light of the above, I found the landlord's testimony alone to be not very reliable and I was unsatisfied the tenant was duly served with the hearing documents, including the Monetary Order worksheet and evidence. I informed the landlord that I would dismiss this Application with leave to reapply. Shortly thereafter, the tenant connected to the teleconference call.

The tenant testified that she learned of this hearing because the Residential Tenancy Branch sent her a "reminder" email and she called the Residential Tenancy Branch to enquire further. I confirmed that the landlord had provided the Residential Tenancy Branch with the tenant's email address on his Application and I found the tenant's explanation plausible.

The tenant stated that she was not served with the landlord's hearing documents or evidence. The tenant acknowledged that she picked up some documents from the building concierge but she claimed the package was incomplete. The landlord acknowledged that he gave the documents to the building concierge and not to the tenant directly.

Where a party makes a Monetary Claim against another party, the applicant must serve the respondent in a manner that complies with section 89(1) of the Act. Section 89(1) provides that the Application for Dispute Resolution and other required hearing documents must be served to the respondent either: to the respondent in person, or sent to the respondent's address of residence or forwarding address by registered mail. An applicant may also obtain a Substituted Service Order from the Director upon application for such if personal service or registered mail cannot be used.

The purpose of serving hearing documents is in keeping with the principles of natural justice which include a respondent's right to be notified of the charges against them, receipt of the evidence that will be used against them, and the opportunity to provide a defence or response.

I informed the landlord that leaving documents with the building concierge is not sufficient for me to consider the tenant personally served unless the building concierge were to provide evidence that he personally served the tenant with the hearing documents. Nor, did the landlord demonstrate he served the detailed monetary breakdown and evidence upon the tenant at any time. As such, I informed the parties that my decision to dismiss this Application with leave to reapply would stand despite the tenant's attendance at the hearing.

The tenant provided a forwarding address to the landlord during the hearing that he may use to send her documents by registered mail.

The tenant attempted to make statements concerning improper service of documents during the tenancy; however, I did not permit further submissions on that matter since I had already determined the landlord did not properly serve the tenant with the hearing documents for this proceeding.

Having dismissed this Application with leave to reapply, I strongly encourage the landlord to familiarize himself with the service provisions of the Act, in particular section 89(1) and Rules 2.5 and 3.1 of the Rules of Procedure. Further information concerning service provisions may be found on the Residential Tenancy Branch website which includes Residential Tenancy Branch Policy Guideline 12: *Service provisions*; and/or by contacting an Information Officer with the Residential Tenancy Branch.

On another procedural note, I had to caution the parties multiple times to refrain from interrupting me and the other party while speaking and arguing with each other. Since it is likely these parties will have a future dispute resolution hearing, I provide the following information to the parties so that they are fully aware of the expectations for their conduct at a dispute resolution proceeding.

#### **6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing**

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

#### **Conclusion**

The landlord'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: May 10, 2019

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Residential Tenancy Branch