



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S MNRL-S

### Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified that she served the notice of dispute resolution package on the tenant by registered mail. However, the landlord was unable to state the date when the notice of dispute resolution package was served.

An application for dispute resolution is a document that is governed by section 89 of the *Act* which states as follows:

- 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*].

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* say the applicant must be prepared to the satisfaction of the arbitrator that the respondent was served with the Notice of Dispute Resolution Proceedings Package and all evidence as required by the *Act*.

Furthermore, the *Residential Tenancy Branch Policy Guidelines* PG-12 provides guidance regarding service of document provisions in the *Act*. Part 15 of PG-12 speaks specifically to proof of service:

## **15. PROOF OF SERVICE**

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. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

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.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply.

In this matter, the landlord did not provide evidence as to the date and time of service or the name of the person who served the documents. Furthermore, the landlord did not provide the Canada Post registered mail tracking numbers. Based on the landlord's lack of evidence regarding service, I am not satisfied that the tenant was properly served with copies of the landlord's notice of hearing and application for dispute resolution. Consequently, I dismiss this application with leave to reapply.

### Conclusion

The landlord's application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Residential Tenancy Act* or the *Limitation Act*.

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: June 13, 2019

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Residential Tenancy Branch