



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDCT, FFT

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

### Issue(s) to be Decided:

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act)*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

### Background and Evidence:

The male Tenant stated that:

- on March 15, 2019 the Dispute Resolution Package was sent to the Agent who was acting on behalf of the Landlord during this tenancy, via registered mail;
- on March 18, 2019 that Agent who was acting on behalf of the Landlord during this tenancy advised the Tenants that they were no longer acting on behalf of the Landlord, and they recommended that the Dispute Resolution Package be mailed to the rental unit;
- on March 18, 2019 the Agent who was acting on behalf of the Landlord during this tenancy forwarded a message from the Landlord, in which the Landlord declared that she was not living at the rental unit;
- on April 08, 2019 the Dispute Resolution Package was returned to the Tenants by Canada Post;
- on April 10, 2019 the Dispute Resolution Package was sent to the Landlord at the rental unit, via registered mail;

- the Dispute Resolution Package that was mailed to the rental unit was also returned to the Tenants by Canada Post;
- they have periodically checked the rental unit and they do not believe anyone is residing in the unit;
- they believe the Landlord is living in another country; and
- they have not attempted to serve the Dispute Resolution Package to the party that advertised the property for rent after their tenancy ended.

Analysis:

The purpose of serving the Dispute Resolution Package to a Respondent is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claim(s) being made by the Applicant. When a tenant files an Application for Dispute Resolution in which the tenant has applied for a monetary Order, the tenant has the burden of proving that the landlord was served with the Dispute Resolution Package in accordance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with the Dispute Resolution Package 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
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Tenants submitted no evidence to establish that the Landlord was personally served with the Dispute Resolution Package. I therefore find that the Landlord was not served with these documents in accordance with section 89(1)(a) of the *Act*.

On the basis of the undisputed evidence I find that on March 15, 2019 the Dispute Resolution Package was sent, via registered mail, to the Agent who was acting on behalf of the Landlord during this tenancy. On the basis of the undisputed evidence I find that this Agent informed the Tenants that the Agent would not accept the Dispute Resolution Package as the Agent was no longer acting on behalf of the Landlord. On the basis of the undisputed evidence I find that this Agent did not accept the Dispute Resolution Package and that it was returned to the Tenants by Canada Post.

As there is no evidence that the Agent who was acting on behalf of the Landlord during this tenancy was still acting on behalf of the Landlord on March 15, 2019, I find that the Dispute Resolution Package has not been served to the Landlord in accordance with section 89(1)(b) of the *Act*.

On the basis of the undisputed evidence I find that on April 10, 2019 the Dispute Resolution

Package was sent, via registered mail, to the rental unit. On the basis of the undisputed evidence I find that nobody was living in the rental unit on April 10, 2019. As there is no evidence that the Landlord resides at the rental unit, I find that the Dispute Resolution Package has not been served to the Landlord in accordance with section 89(1)(c) of the *Act*.

There is no evidence that the director authorized the Tenants to serve the Dispute Resolution Package in an alternate manner. I therefore find that the Dispute Resolution Package has not been served to the Landlord in accordance with section 89(1)(e) of the *Act*.

The undisputed evidence is that the Dispute Resolution Package was returned to the Tenants by Canada Post on two occasions. As no evidence was submitted that causes me to conclude that the Landlord received the Dispute Resolution Package, I cannot conclude that the documents have been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has not been properly served with the Dispute Resolution Package and the Landlord did not attend the hearing, I am unable to proceed with the hearing in the absence of the Landlord. The Tenants' Application for Dispute Resolution is therefore dismissed, with leave to reapply.

Conclusion:

The Tenants' Application for Dispute Resolution is dismissed, with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution in regards to this matter.

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 28, 2019

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Residential Tenancy Branch