



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FFL, MNDCL, MNDL-S, MNRL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 17, 2019 (the “Application”). The Landlord sought the following:

- Compensation for damage to the rental unit;
- Compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit; and
- Reimbursement for the filing fee.

The Landlord appeared at the hearing. Nobody appeared for the Tenants. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that hearing packages and evidence were sent to the Tenants by registered mail on April 26, 2019 to their forwarding address as provided on the Condition Inspection Report.

The Landlord submitted evidence of service including Xpresspost labels with Tracking Number 1 and 2 on them. I looked these up on the Canada Post website which shows the packages were delivered to a “community mailbox, parcel locker or apt./condo mailbox” on April 29, 2019.

The Landlord submitted delivery notification emails from Canada Post stating the packages had been “delivered to your community mailbox, parcel locker or apt./condo mailbox.”

On the Canada Post website, the delivery confirmation states, "Signature option was not requested" under "Signatory Name".

The Landlord could not point to where in the evidence of service it shows that a signature was requested for the packages.

The Landlord submitted the Condition Inspection Report. The address on the Condition Inspection Report is different than the address on the Xpresspost labels by one number in the unit number.

During the hearing, the Landlord advised that he had an email showing the Tenants received the hearing packages and evidence. I told the Landlord he could submit this and I would decide in my written decision whether to admit it as evidence or not as it should have been provided as proof of service prior to the hearing date.

The Landlord submitted two documents containing emails. These show the Landlord sent Tenant L.L. an email May 11, 2019 stating, "If you're home, please confirm that you received the package. It was sent registered mail, so I know it was delivered. It's important that you get the instructions inside..." Tenant L.L. replied May 15, 2019 stating, "I got it yesterday. So just confirming." The email chain does not mention an Application for Dispute Resolution, a hearing package, evidence or anything about a dispute or the RTB. A separate email dated July 03, 2019 from Tenant L.L. was submitted stating, "You had mentioned early about submitting documents for the hearing. I was wondering if that was an option available to myself as well? If so how do I go about doing that?"

The Landlord was required to serve the hearing package on both Tenants individually in accordance with section 89(1) of the *Residential Tenancy Act* (the "*Act*") which states:

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...

(c) by sending a copy by registered mail to the address at which the person resides...

(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)...

Registered mail is defined in section 1 of the *Act* as follows:

"registered mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available

[emphasis added]

I am not satisfied the Tenants were served in accordance with section 89(1) of the *Act*. I find the Landlord sent the packages by Xpresspost but did not request the signature option. The Canada Post website and evidence shows the packages were delivered to a community mailbox, parcel locker or apartment/condo mailbox and not to a named person. I find the packages were not sent by registered mail as that term is defined in the *Act* as confirmation of delivery of the packages to a named person is not available with the method used.

I also have concerns about service given there is a difference between the forwarding address on the Condition Inspection Report and the address used for the packages.

In the circumstances, I am not satisfied the Tenants were served in accordance with section 89(1) of the *Act*. I note that the service methods permitted under sections 88 and 89(2) of the *Act* are not sufficient for an Application for Dispute Resolution in which monetary compensation is being sought.

Given the hearing packages were not served in accordance with section 89(1) of the *Act*, section 90 of the *Act* does not apply and the Tenants are not deemed to have received the packages.

Pursuant to section 71(2) of the *Act*, it is open to an arbitrator to determine that parties have been sufficiently served for the purposes of the *Act*. I find this section is appropriate to apply when there is compelling evidence that the parties in question did in fact receive the necessary documents.

Here, the Tenants did not appear at the hearing to confirm receipt of the hearing packages. The Tenants did not submit evidence for the hearing which may have indicated they received the hearing packages.

The Landlord submitted emails from Tenant L.L. I do not find these sufficiently compelling to find the Tenants were sufficiently served pursuant to section 71(2) of the *Act*. The emails do not relate to Tenant K.B. and therefore I would not have allowed the Landlord to proceed against her in any event. The first string of emails about Tenant L.L. receiving a package do not clearly show that Tenant L.L. received the hearing package. The email does not say anything about an Application for Dispute Resolution, a hearing package, evidence, the RTB or make any other reference that satisfies me that Tenant L.L. received the hearing package. Nor does the date of the email satisfy me that Tenant L.L. is confirming service of the hearing package as he

confirms receipt of a package 15 days after the hearing package was delivered to a mailbox. The second email document does not show that Tenant L.L received the hearing package or evidence and seems to indicate that he is unaware of information that would have been contained in the hearing package.

In the circumstances, I am not satisfied there is sufficient evidence before me showing the Tenants received the hearing packages such that I would find they were served pursuant to section 71(2) of the *Act*.

Given I am not satisfied of service, I dismiss the Application with leave to re-apply.

### Conclusion

I am not satisfied of service on the Tenants and therefore dismiss the Application with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 21, 2019

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Residential Tenancy Branch