



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for compensation of \$7,800.00 based on the tenant's description that the landlord evicted him so that family could move in and the unit remained vacant. Both parties appeared for the hearing.

At the outset of the hearing I explored service of hearing documents upon each other. The tenant testified that he served the hearing package to the landlord via registered mail sent on July 24, 2019 and he submitted a copy of a receipt for the registered mail. The tenant testified that he served his evidence to the landlord via registered mail "very recently" but that he did not know the date he did so and stated the receipt should be in his evidence package. I noted that the only registered mail receipt that was submitted by or on behalf of the tenant was dated July 24, 2019. Then, the tenant said the registered mail sent recently was done so by a tenant organization.

The landlord confirmed receipt of the registered mail package of July 24, 2019 and described the package as containing the details of dispute as written on the tenant's Application for Dispute Resolution only. The landlord stated that his daughter was served with an evidence package in person in an envelope dated October 22, 2019. The landlord confirmed receipt of another registered mail package very recently, but he did not know the date he received it and he no longer had the envelope it came in.

As for the landlord's evidence package, the landlord testified that it was given to the tenant in person on or about October 18, 2019. The tenant acknowledged the landlord served him, but the tenant did not know the date this was done.

The tenant also acknowledged that he forgot to mention he had served documents to the landlord's daughter in person. The tenant explained that he has a disability and he

has difficulty with short term memory. The tenant also acknowledged that his evidence was served late and attributed the late submission to his brain injury.

I noted that the tenant's evidence did not include a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property which is the eviction notice that would give rise to the type of compensation sought by the tenant. The tenant suggested that I may find a 2 Month Notice in the evidence submitted for a hearing the parties had in December 2018.

The landlord did not include a copy of a 2 Month Notice in his evidence package either, although this is the tenant's burden to provide since he is the claimant. The landlord indicated he may be able to locate a copy of the 2 Month Notice if given time to locate it.

The tenant then stated he found a copy of the 2 Month Notice. I asked the tenant to read from the 2 Month Notice, including the effective date appearing on the 2 Month Notice. The tenant testified that the effective date read July 31, 2018. The landlord responded by stating that was the first 2 Month Notice serve to the tenant and that there was another 2 Month Notice served upon the tenant.

Section 59(2) of the Act requires an applicant to submit the full particulars as their claim with their Application for Dispute Resolution. Section 88 and 89 of the Act provide requirements for serving an Application for Dispute Resolution and evidence. The Rules of Procedure provide rules pertaining to documents that must be submitted and served for a dispute resolution proceeding, and deadlines for doing so, among many things. The above described requirements of the Act and the Rules of Procedure were developed in keeping with the principles of natural justice with a view to having a fair dispute resolution proceeding.

Considering all of the above, it was clear to me that the parties were not sufficiently prepared for this proceeding in a number of ways. The tenant did not submit and serve evidence that ought to have been served at the time of filing including the most critical document to this case which is the 2 Month Notice on which the tenant bases his claim. Nor, was the tenant able to establish that he duly served the landlord with his evidence packages in a manner required under the Act or within time. Serving the landlord's daughter is not proper service even if it had been served within time. Also of consideration is that the parties were uncertain as to events that took place very recently (service and receipt of evidence) and were in disagreement as to the 2 Month Notice that ended the tenancy. It was also apparent to me that in the absence of a full understanding as to the nature of the tenant's claim, the landlord may have failed to

provide all relevant evidence. Overall, I was unsatisfied that I would be provided reliable submissions and corroborating evidence in order to make a reasonably sound decision in this case. Therefore, I declined to proceed with this claim pursuant to the authority afforded me under section 59(5) of the Act.

I accepted that the tenant may be impaired by some mental or intellectual disability and I am not persuaded that the failure to provide full and necessary details and documents and serve properly was a deliberate attempt to unreasonably delay the proceedings or gain an advantage. Therefore, I dismissed the tenant's Application for Dispute Resolution with leave to reapply.

Both parties were encouraged to familiarize themselves with their respective obligations under the Act and the Rules of Procedure, including preparing for and participating in a dispute resolution process, and to consider seeking assistance from resources available to them.

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: October 29, 2019

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Residential Tenancy Branch