



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FFT

### Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Only tenant A.C. and the tenant's agent J.C. attended the hearing. Tenant A.C. confirmed authorization to act on behalf of the other named tenant M.H.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:57 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant, the tenant's agent and I were the only ones who had called into this teleconference.

### Preliminary Issue – Service of Notice of Dispute Resolution Proceeding Documents

As only the tenant attended the hearing, I asked the tenant to confirm that they had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that they served the notice of this hearing by Canada Post registered mail and provided a registered mail tracking number (noted on the cover sheet of this Decision). I asked the tenant if they had checked whether the package had been delivered as there was no tracking report submitted into evidence. The tenant was unable to confirm the delivery of the package, as such, during the hearing I

accessed the Canada Post website and found that the package had been refused by the recipient.

I confirmed with the tenant the address to which the package was sent. The tenant provided the same address for the landlord as the rental unit dispute address. The tenant explained that the rental unit was located in the basement of the rental property and that the landlord resided in the main level of the property. However, I note that the tenant's Application for Dispute Resolution does not provide any differentiation between the address of the rental unit and the address of the landlord. I asked the tenant if there was a written tenancy agreement or any documentation to demonstrate that the notice of hearing package was sent to the address for service of the landlord, as no documentary evidence was submitted to confirm the tenancy agreement between the parties, other than two text messages. The tenant testified that they had asked the landlord for a copy of the tenancy agreement but the landlord had refused to provide them with a copy.

I explained to the tenant that it is important to be able to confirm that the Notice of Dispute Resolution Proceeding package, which contains the tenant's Application for Dispute Resolution, has been sent to the current address at which the landlord resides, and not the address of the rental unit, in order to ensure proper service of documents.

Where a respondent is not at the hearing, the applicant bears the burden to prove the respondent was served with notification of the hearing and the claims against them, as set out in Rule 3.5 of the Residential Tenancy Branch Rules of Procedures, which states:

*3.5 Proof of service required at the dispute resolution hearing:*

*At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.*

Since this application pertains to a monetary claim by a tenant against a landlord, the only methods of service that are permissible, as outlined in section 89(1) of the Act, are as follows:

- serving the landlord (or an agent of the landlord) in person with a copy of the Notice of Dispute Resolution Proceeding package;

- sending a copy of the Notice of Dispute Resolution Proceeding package by registered mail to the address at which the landlord resides, or to the address at which the landlord carries on business as a landlord; or
- as ordered by the director (or director's representative) for the Residential Tenancy Branch.

The tenant has the burden of proving service, as explained in Part 15 of Policy Guideline 12, which provides further particulars on how to carry out service by registered mail, as follows, in part:

*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 by **Registered Mail** should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

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

In this case, I find that the tenant failed to establish that the landlord was served with notification of this proceeding to the address at which the landlord resides as required by section 89(1) of the *Act*. Therefore, I order this application dismissed, and grant the tenant liberty to reapply. I make no findings on the merits of the matter. The issuance of this decision with leave to reapply does not extend any applicable time limits under the *Act*.

#### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? If so, is the tenant entitled to a monetary award equivalent to the value of the security deposit because of the landlord's failure to comply with section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

#### Conclusion

As noted above, I dismiss this Application for Dispute Resolution with leave to reapply due to an issue with service of notice.

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: December 17, 2019

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Residential Tenancy Branch