



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, MNRL, MNDCL**

### Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for rent and/or utilities pursuant to section 67; and
- An order for compensation for monetary loss or other money owed pursuant to section 67.

The landlord attended the hearing, the tenant did not. The landlord testified he served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail, the tracking number is recorded on the cover page of this decision.

### Preliminary Issue

The landlord testified he obtained the mailing address of the tenant, a Post Office Box when he was given a document from the tenant in response to the landlord's application to garnish the tenant's wages. The landlord testified that on January 31, 2020, the tenant and his spouse delivered a notice, filed by the two of them, to stop the garnishment through the court. During a hearing before a judge, the tenant's spouse had advised the court that the Post Office Box is the right place for the landlord to serve evidence in relation to the court proceedings. The tenant named in this proceeding did not attend the hearing at the court. A copy of the court document served by the tenant was not provided for this hearing.

An Application for Dispute Resolution requires special rules for service as stated in section 89(1) of the *Act* which requires service by:

- 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 3.1 of the Residential Tenancy Branch Rules Of Procedure (“Rules”) states: The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a. the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b. the Respondent Instructions for Dispute Resolution;
- c. the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d. any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Rule 3.5 of the Rules states:

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.

Residential Tenancy Branch Policy Guideline PG-12 provides further clarification at section 15:

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.

...

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.

The landlord did not serve the tenant with the Notice of Dispute Resolution Proceedings at the tenant's residential address and it wasn't an address provided to the landlord as a forwarding address by the tenant. While it would have corroborated the mailing address of the tenant, no copy of the court document bearing the Post Office box was provided as evidence by the landlord. Lastly, the testimony of the landlords was that the tenant's spouse attended the hearings at the court, not the named tenant in this proceeding. For these reasons, I am not satisfied the tenant was served properly with the Notice of Dispute Resolution Proceedings in accordance with section 89 of the *Act* and I find I must dismiss the landlord's application with leave to reapply.

#### Conclusion

The landlord's application is dismissed with leave to reapply. I make no findings on the merits of the application. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution.

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: July 06, 2020

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Residential Tenancy Branch