



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, MNSD, RPP**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order for the landlord to return the tenant's personal property pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional forty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

### *Service of Notice of Hearing and Evidence Package*

As the landlord did not attend the hearing, I considered whether the tenant served the landlord as required under the *Act*.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on August 13, 2020 to the landlord's residential address; the documents are deemed received by the landlord under section 90 of the *Act* five days later, that is, on August 18, 2020. The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page.

The Act sets out how documents must be served. Section 89(c) of the Act addresses service by registered mail. The entire section 89 states as follows:

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;
- (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]*.

[emphasis added]

The Rules of Procedure set out the obligation of the applicant, the tenant in this case, to provide proof of service. Section 3.5 states as follows:

### **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 Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

*Residential Policy Guideline # 12 – Service* states in part as follows:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

...

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, the tenant submitted no supporting documentary evidence such as the Canada Post Registered Mail receipt referenced above. The only evidence submitted by the tenant is testimony that he sent the documents by registered mail, the date and the tracking numbers. The tenant also submitted no documentary evidence in support of the substance of his claim.

I have considered the tenant's testimony, the Act, Rules and Guideline. Without any documentary evidence indicating the tenant complied with the rules for service by registered mail, I am unable to find that the tenant complied with the service requirements of the Act and Rules.

Accordingly, I find the tenant has failed to meet the burden of proof and the requirements of section 89 that he served the landlord with the Notice of Hearing and evidence package.

Therefore, I dismiss the tenant's claim with leave to reapply.

### *Conclusion*

I dismiss the tenant's claim with leave to reapply.

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: September 14, 2020

---

Residential Tenancy Branch