



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Authorization to withhold the Tenant's security deposit towards money owed.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent acting on their behalf attended.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. The Tenant testified that they were never served with a copy of the Application, the Notice of Hearing, or any of the documentary evidence before me by the Landlord, and only became aware of the hearing as the result of an auto-generated email from the Residential Tenancy Branch (the Branch) sent to them on January 1, 2021, reminding them of today's hearing.

The Tenant stated that they were confused when they received the email as they were not aware of any disputes against them and called the Branch first thing this morning to see what the email related to, which is how they were provided with the hearing information. The Tenant stated that the Branch also emailed them a copy of the Notice of Dispute Resolution Proceeding, which includes details about the Application, which is how they discovered that the address listed for them by the Landlord is an old address where they have not resided for some time.

Records at the Branch confirm that an auto-generated email was sent to the Tenant on January 1, 2021, as stated by the Tenant, as the Landlord entered the Tenant's email

address when filing the Application. Records at the Branch also confirm that the Tenant called the Branch this morning as stated, and that they were provided with the hearing information and a copy of the Notice of Dispute Resolution Proceeding by a Branch staff member.

The Landlord did not attend the hearing for their own Application to provide any testimony with regards to service of the Application, the Notice of Hearing, and the documentary evidence before me on the Tenant and I note that the registered mail tracking information provided by the Landlord shows that registered mail sent on September 20, 2020, shortly after the Application was filed, was returned to sender as unclaimed.

Section 59 of the Act states the following with regards to the service of the Application on the Respondent:

### **Starting proceedings**

- 59** (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

### **3.1 Documents that must be served with the hearing package**

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package 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].

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a

Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I find that being advised of the date and time of the hearing by the Branch as the result of receipt of an auto-generated reminder email and a call to an Information Officer does not constitute service under the Act and as a result, I find that the Tenant has not been duly served with the Application, the Notice of Hearing, or the evidence before me from the Landlord in accordance with the above noted sections of the Act and the Rules of Procedure.

Further to this, I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. Although the Tenant appeared at the hearing, I find that they did not have a fair opportunity to know the case against them or provide a proper defense at the hearing as they were not properly served with the Application, the Notice of Hearing, or the documentary evidence before me from the Landlord as required. As a result, the Application is dismissed with leave to reapply.

Prior to the conclusion of the hearing the Tenant voluntarily provided me with their current address for service, which has been recorded on the cover page for this decision, as they stated that they are not attempting to avoid service or their obligations to pay any amounts owed.

### Conclusion

The Landlord's Application is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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: January 4, 2021

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Residential Tenancy Branch