



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both parties provided email addresses to receive this decision.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

### Preliminary Issue – Correction of the Tenant's Name

At the outset of the hearing the tenant corrected the spelling of his first name. Pursuant to section 64(3)(a) of the Act, I have amended the landlord's application.

### Preliminary Issue – Service

The landlord affirmed the tenant was served in person by a private investigator with the notice of dispute resolution and the evidence (the materials) on January 07, 2021 and that he sent a registered mail package containing the materials on January 11, 2021. Both the service in person and the registered mail service occurred at the address mention on the cover page of this decision (tenant's address 1). The landlord stated he has seen the tenant at this address and the rental building's concierge confirmed to the landlord that the tenant occupies a rental unit at this address.

The tenant stated he did not receive the materials and that the tenant's address 1 is not his forwarding address. The tenant testified that his employee received a package on January 11, 2021 and sent him a photo of two pages of the notice of dispute resolution. The tenant said he has been overseas for the last six months.

The landlord submitted a letter dated January 11, 2021 signed by the private investigator:

I attended the building's concierge and asked for access to Mr. [tenant] unit at [tenant's address 1]. The concierge confirmed by providing me with a fob to access the elevator to reach his unit. [Tenant] opened the door and I served him the papers. I positively identified him by his BC Driver's Licence and Facebook photo.

On January 11, 2021 the landlord emailed the tenant:

I acknowledge that you have been officially served [omitted] with all the residential dispute documents. The hearing date is scheduled for April 26, 2021 at 1:30 PM. Please let me know if you wish to solve this issue privately, otherwise, an arbitrator will judge for us.

The tenant replied on January 28, 2021:

I'm in [omitted] and have been for the last month. I think you are thinking of one of my employees that looks very similar to me.

The tenant confirmed his current mailing address is the address mentioned on the cover page of the decision and that he can be served tenancy documents, including a notice of dispute resolution, at the email address mentioned on the cover page of this decision (the same email address was provided to receive this decision). Later in the hearing the tenant retracted his testimony and affirmed he will seek legal advice about service.

Section 89 of the Act states:

- (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].

Residential Tenancy Branch Policy Guideline 12 states:

**The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.**

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.  
[...]

**The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.**

(emphasis added)

The parties offered conflicting testimony about the tenant's forwarding address. The tenant's email indicates the tenant has been overseas. The landlord served the tenant in an address not found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution. I find the landlord failed to prove, on a balance of probabilities, that he served the materials in the tenant's forwarding address.

Thus, I find the tenant was not served in accordance with section 89(1) of the Act and dismiss the landlord's application for a monetary order and for an authorization to retain the tenant's deposit with leave to reapply. Leave to reapply is not an extension of timeline to apply for dispute resolution.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

### Conclusion

I dismiss the landlord's application for a monetary order and for an authorization to retain the tenant's deposit with leave to reapply.

I dismiss the landlord's application to recover the filing fee without 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: April 29, 2021