



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 16, 2021 (the “Application”). The Tenant sought return of the security deposit and compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package and evidence were sent to the Landlord by registered mail to the address for the rental unit. The Tenant said evidence of service was before me; however, there was no evidence of service provided. The Tenant could not provide the tracking number for the registered mail package as the Tenant did not have this before them. The Tenant could not say when the package was sent other than that it was sent three days after the Tenant received the hearing package from the RTB. At first, the Tenant testified that the Landlord lives at the rental unit address. Then, the Tenant testified that the Landlord does not live at the rental unit address but has a workshop on the property and is there every day. The Tenant then suggested that the Landlord has living accommodation on the property but might not stay there. The Tenant testified that they just know that the rental unit address is where the Landlord is.

I told the Tenant I would consider the service issue and make a final decision in my written decision. I proceeded to hear the Tenant on the Application.

The Tenant was required to serve the Landlord in accordance with section 89(1) of the *Residential Tenancy Act* (the “*Act*”) which is very specific and states:

89 (1) An application for dispute resolution...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];
- (f) by any other means of service provided for in the regulations.

Pursuant to rule 3.5 of the Rules, the Tenant was required to prove service at the hearing.

The Tenant gave conflicting testimony about service at the hearing. The Tenant could not provide details of service at the hearing. The Tenant had not provided documentary evidence of service prior to the hearing. In the circumstances, I am not satisfied the Landlord was served in accordance with section 89(1) of the *Act*.

Further, I am not satisfied based on the evidence provided that the rental unit address is the Landlord's residence because the Tenant testified at one point that it is not. As well, I am not satisfied the rental unit address is a place at which the Landlord carries on business as a landlord because the Tenant testified that the Landlord has a workshop on the property; however, it is not clear how the workshop is connected to the Landlord's business as a landlord. I also note that it was not sufficient for the Tenant to

serve the Landlord at a location that the Tenant personally knows the Landlord attends. The Tenant was required to serve the Landlord in accordance with section 89(1) of the *Act* and the specific requirements of this section.

In the circumstances, I am not satisfied the Landlord was served with the hearing package and evidence. Therefore, the Application is dismissed **with leave to re-apply**. The Tenant can re-apply; however, the Tenant must serve the Landlord in accordance with the *Act* and must prove service at any future hearing. I also note that this decision does not extend any time limits set out in the *Act*.

### Conclusion

The Application is dismissed **with leave to re-apply**. This decision does not extend any time limits set out in the *Act*.

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: July 06, 2021

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Residential Tenancy Branch