



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT

### Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant and the tenant's advocate attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, the tenant's advocate and I were the only ones who had called into this teleconference.

The tenant and the tenant's advocate were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant and the tenant's advocate testified that they are not recording this dispute resolution hearing.

The tenant requested this decision be sent to his advocate's email. The advocate confirmed her email address for service of this decision.

Preliminary Issue- Amendment

The tenant testified that listed his nickname as his first name on this application for dispute resolution. The tenant testified to his legal first name. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to state his legal first name and not his nickname.

Preliminary Issue- Service

The tenant testified that he posted a copy of this application for dispute resolution on the landlord's door on October 10, 2021. The advocate testified that she witnessed the above service. The tenant applied for dispute resolution on November 12, 2021 and the notice of dispute resolution materials were not made available to the tenant until November 12, 2021. I find that it was not possible for the tenant to have served the tenant with the dispute materials on October 10, 2021 because they were not provided to the tenant until November 12, 2021. For this reason, I dismiss the tenant's application with leave to reapply, for failure to prove service.

Section 89(1) of the *Act* states that 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*].

In addition to my findings above, I find that posting or leaving a copy of the application for dispute resolution in the mailbox is not an approved method of service under section 89 of the *Act*. For this reason, the tenant's application for dispute resolution is also dismissed, with leave to reapply.

I notified the tenant and the tenant's advocate that in any future application for dispute resolution, they would be required to prove service, in accordance with section 89 of the *Act*.

### Conclusion

The tenant's application for dispute resolution is dismissed 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: April 08, 2022

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Residential Tenancy Branch