



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing dealt with the tenant's application, filed on December 29, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the tenant's security deposit of \$425.00, totalling \$850.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 14 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:44 p.m. I monitored the teleconference line throughout this hearing. 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 and I were the only people who called into this teleconference.

The tenant confirmed his name and spelling. He confirmed the rental unit address. He provided his email address for me to send a copy of this decision to him after this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. At the outset of this hearing, the tenant affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the tenant. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Tenant’s Application

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenant’s paper application only, not any submissions from the landlord.

An “interim decision,” dated January 31, 2022, was issued by an Adjudicator to the tenant, for the direct request proceeding. The interim decision adjourned the tenant’s application from the direct request proceeding to this participatory hearing. A notice of reconvened hearing, dated February 1, 2022, was also issued by the RTB to the tenant.

The interim decision states the following at page 2, as to why the application was adjourned to this participatory hearing:

*Section 4 of the Act establishes that living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation is not governed by the Act.*

*I find that the tenant’s address and the landlord’s address on the Application for Dispute Resolution by Direct Request are identical. I also note there is no indication as to whether the tenant had access to their own bathroom or kitchen facilities or whether the landlord is the owner of the accommodation being rented out.*

*For this reason, I find that there is a question regarding whether I have jurisdiction to decide this matter. I find that a participatory hearing is required in order to determine jurisdiction.*

The tenant was required to serve the landlord with a copy of the interim decision, the notice of reconvened hearing, and all other required documents, within three days of receiving it, as outlined in the interim decision itself. The interim decision states the following at page 3 (bold emphasis in original):

***Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim***

***decision, and all other required documents, upon the landlord within three (3) days of receiving this decision in accordance with section 89 of the Act.***

The tenant initially stated that he did not receive copies of the interim decision or notice of reconvened hearing from the RTB. He kept asking whether I was referring to the RTB-generated email reminders sent to him to remind him of this hearing. I repeatedly notified the tenant that I was asking about service of the interim decision and notice of reconvened hearing, which adjourned the direct request application to this participatory hearing. The tenant claimed that he did not know what documents I was referring to and it had been a long time since he filed this application. He said that he did not know when he received the above documents.

I informed the tenant that he was emailed the above documents by the RTB on February 1, 2022, to serve it to the landlord within 3 days, by February 4, 2022, as per the online RTB dispute access site notes.

The tenant then claimed that he served the landlord with the interim decision and notice of reconvened hearing by posting it to the door on February 8, 2022, and by way of registered mail on February 7, 2022. He did not provide any registered mail tracking number during this hearing. He claimed that he could not find it, despite searching for it during this hearing.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

*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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*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.***

I find that the tenant did not serve the landlord with the interim decision or notice of reconvened hearing, as required by section 89 of the *Act*, Rule 3.1 of the *RTB Rules*, and Residential Tenancy Policy Guideline 12.

I informed the tenant that posting to the door is not a permitted method of service, pursuant to section 89(1) of the *Act*. I notified the tenant that he did not provide a tracking number to confirm service by registered mail, as required by Residential Tenancy Policy Guideline 12, above. The landlord did not attend this hearing to confirm service of the above documents.

I informed the tenant that he was given ample time of 14 minutes during this hearing to log into his online account, look through his paperwork, and provide evidence regarding service.

The tenant originally filed the direct request application on December 29, 2021. The interim decision is dated January 31, 2022, and the notice of reconvened hearing is dated February 1, 2022. This hearing occurred on August 30, 2022.

The tenant had ample time from February 1, 2022 to August 30, 2022, a period of almost 7 months, to provide the above information and documentation regarding service of the interim decision and notice of reconvened hearing.

I notified the tenant that his application was dismissed with leave to reapply, except for the \$100.00 filing fee. I notified him that he was at liberty to file a new application and pay a new filing fee, if he wants to pursue this matter in the future. I informed him that

this current application file would be closed, and no evidence or documents would transfer over to a new future file. He confirmed his understanding of same.

Conclusion

The tenant's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the tenant's application 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: August 31, 2022

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Residential Tenancy Branch