



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSD, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 1:39 pm. in order to enable the landlords to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant KB (the "tenant") and I were the only ones who had called into this teleconference.

The tenant testified that both landlords were served with the Notice of Dispute Resolution Hearing by sending a copy of the notice to them via registered mail on March 4, 2022. The tracking number for the mailing was provided during the hearing. The tenant testified that the mailing was returned to her as unclaimed.

### Issue – service of Notice of Dispute Resolution Hearing

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

*At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that **each respondent** was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.*

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

*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 document]...*

Residential Tenancy Branch Policy Guideline PG-12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The tenant did not provide any documentary evidence to satisfy me that the landlords reside at the address to where they were sent the Notice of Dispute Resolution Proceedings. Secondly, the tenant sent both landlords a single copy of the Notice of Dispute Resolution Proceedings instead of sending each landlord their own copy, contrary to rule 3.5.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position. Procedural fairness requires that I find that each of the landlords has been served with the application for dispute resolution as required by section 89. I have insufficient evidence to make such a finding. Consequently, I must dismiss this application with leave to reapply.

### Conclusion

This application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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: October 17, 2022