



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, OT, FFT

### Introduction

This hearing dealt with the tenant's application, filed on February 9, 2022, and amended on June 1, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the tenant's security deposit of \$1,350.00, pursuant to section 38;
- other relief, identified as a disputed additional rent increase of \$650.00; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 13 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 1:43 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 stated her name and spelling. She confirmed the rental unit address. She provided her email address for me to send a copy of this decision to her after this hearing.

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

I explained the hearing process to the tenant. She had an opportunity to ask questions, which I answered. She 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 April 1, 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 April 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 2 (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 was emailed the above documents by the RTB on April 1, 2022, to serve it to the landlord within 3 days, by April 4, 2022, as per the online RTB dispute access site notes.

The tenant claimed that she served the landlord with the interim decision and notice of reconvened hearing on April 5, 2022, by way of registered mail. She provided a Canada Post tracking number verbally during this hearing. She said April 5 was the date of the stamp on the envelope she had in front of her. She claimed that she could not read the date on the mail receipt in front of her. She said that she sent her forwarding address to the landlord first on February 27, 2022.

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 within 3 days, as required by section 89 of the *Act*, Rule 3.1 of the *RTB Rules*, and Residential Tenancy Policy Guideline 12.

The tenant did not provide a Canada Post tracking report to confirm service by registered mail, as per Residential Tenancy Policy Guideline 12, above. The Canada Post receipt provided by the tenant is blurry but states April 4, 2022 as the mail date. The Canada Post tracking number label provided by the tenant does not state a date. When I looked up the Canada Post tracking number provided by the landlord on the Canada Post website, it stated that the mail date was April 4, 2022, not April 5. I informed the landlord that April 5 was the incorrect date of mailing and was not within the required 3 days of April 1, 2022. The landlord did not attend this hearing to confirm service of the above documents.

I informed the tenant that she was given ample time of 13 minutes during this hearing to search for and look through her paperwork and provide evidence regarding service.

The tenant originally filed the direct request application on February 9, 2022. The interim decision and the notice of reconvened hearing are both dated April 1, 2022. This hearing occurred on October 20, 2022.

The tenant had ample time from April 1, 2022 to October 20, 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 her application was dismissed with leave to reapply, except for the \$100.00 filing fee. I notified her that she is at liberty to file a new application and pay a new filing fee, if she wants to pursue this matter in the future. She confirmed her 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: October 20, 2022

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Residential Tenancy Branch