



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNETC, FFT**

### **Introduction**

This reconvened hearing dealt with an application by the tenant under the Residential Tenancy Act (the Act) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72

Both parties attended the reconvened hearing. Both had an opportunity to make submissions, call witnesses and present evidence. I explained the procedure and answered the parties' questions.

### ***Background - First Hearing***

This application was first heard on August 29, 2022. The tenant attended. The landlord did not attend.

After hearing testimony and evidence, I found the tenant had served the landlord as follows:

The tenant testified she sent the Notice of Hearing and Application for Dispute Resolution to the landlord by registered mail to the landlord's residence as determined by a search of the Land Titles Registry of the building in which the unit is located. The tenant mailed the documents on March 1, 2022 thereby

effecting service 5 days later under section 90 on March 6, 2022. The tenant submitted a copy of the receipt and tracking number.

Further to the tenant's testimony and supporting documents, I find the tenant served the landlord on March 6, 2022 in compliance with section 89.

A copy of the title search was not entered into evidence at the hearing.

At the conclusion of the hearing, I granted the application and issued a Decision in the tenant's favour and a Monetary Order dated August 29, 2022, in the amount of \$15,700.00.

#### *Landlord's Residential Address*

The landlord testified at the reconvened hearing to his residential address which appears on the first page ("the landlord's residential address"). The parties agreed the Land Titles Search, served upon the landlord in compliance with the Review Consideration Decision, provides the same address for the landlord. This address is referred to herein as "the landlord's residential address".

#### *Review Consideration Decision*

The landlord applied for a Review Consideration of the Decision and Monetary Order of August 29, 2022. The landlord claimed he was unable to attend as he had not received notification of the hearing.

The Review Consideration Decision directed the original hearing be reconvened before me, the original arbitrator, to determine the issue of whether the landlord was served or whether the landlord was unable to attend the original hearing because of lack of service.

The Review Consideration Decision stated that following the reconvened hearing, the presiding arbitrator may confirm, vary, or set aside the Decision:

This means that the landlord should be prepared to make submissions on the substantive issue of tenant's original application at the reconvened hearing.

#### *Service of Review Consideration Decision on Reconvening of Hearing*

The Review Consideration Decision stated the parties may serve the other party as follows:

1. the tenant may serve the Residential Tenancy Branch (the “RTB”) and the landlord with evidence relating to this issue (including the title search) as soon as possible and no later than 14 days before the reconvened hearing.
2. The landlord may serve the RTB and the tenants with any documentary evidence they intend to rely on at the reconvened hearing no later than 7 days before the reconvened hearing.

Additionally, the tenants were ordered to serve the landlord with copies of all documentary evidence previously submitted to the RTB in this proceeding as soon as possible and not later than 14 days before the reconvened hearing.

The tenant submitted as evidence a copy of the Land Titles Certificate relating to the building in which the unit is located upon which the landlord’s residential address is written.

The tenant provided receipts and tracking numbers for the registered mail dated September 7, 2022, sent to the landlord’s residential address including both the evidence referenced in #1 above and a copy of the Land Titles Certificate. The tenant submitted a photo of the envelope addressed to the landlord and containing the registered mail particulars.

The landlord submitted no documentary evidence.

The landlord denied receipt of the registered mail. The landlord testified he attended the reconvened hearing because “someone” employed by him received an automatically generated email notice from the RTB informing them of the time/date of this hearing.

The landlord proffered no reasonable explanation why he did not receive the registered mail. The landlord acknowledged the registered mail was sent to his residential address. He testified he was living at his address at the time of mailing; he was not out of the country or otherwise unavailable. The landlord stated his best guess was that a mistake had been made by the deliverer and a neighbour or someone else received the mail or notice of the mail by accident.

Section 89 sets out the methods of service (emphasis added):

**89** (1) 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*].  
[emphasis added]

I find as follows. Upon hearing both parties and considering the tenant's documentary evidence, I find the landlord submitted unbelievable and unreliable testimony denying service of this reconvened hearing which was unsupported by any evidence.

I find the tenant presented credible testimony of service supported by documentary evidence. I find the landlord did not provide credible testimony. Accordingly, I give the greatest weight to the tenant's evidence and no weight to the landlord's testimony.

Accordingly, I find the tenant served the landlord with the above documents by sending a copy by registered mail to the address at which the landlord's resides pursuant to section 89. I find the landlord was served in compliance with section 89.

*Service of Notice for August 15, 2022 hearing*

The tenant testified as follows.

1. The tenant submitted as evidence the land titles search titled "Title Search" dated June 16, 2022 for the building in which the unit is located. This 1-page document listed the landlord and his residential address as the "Registered Owner/Mailing Address".

The landlord acknowledged the veracity of the document and that the address was correct (the landlord's residential address).

2. At the August 15, 2022 hearing, the tenant submitted testimony and supporting documentary evidence (receipt and tracking number) that on March 1, 2022, she sent the Notice of Hearing and Application for Dispute Resolution to the landlord at his residential address, being the same address recorded in the Title Search.

At the reconvened hearing, the landlord acknowledged that the tenant sent the registered mail as she testified, that is, to his residential address.

However, the landlord testified he did not receive the registered mail or any notice from the deliverer informing him of the mail. He requested the Decision and Monetary Order of August 29, 2022, be vacated.

As stated above, the landlord proffered no reasonable explanation why he did not receive the registered mail or any notice of the mailing. The landlord acknowledged the registered mail was sent to his residential address. He testified he was living at his address at the time of mailing; he was not out of the country or otherwise unavailable. The landlord stated his best guess was that a mistake had been made by the deliverer and a neighbour or someone else received the mail by accident.

As cited above, section 89 sets out the methods of service (emphasis added):

**89** (1) 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*].  
[emphasis added]

I find as follows. Upon hearing both parties and considering the tenant's documentary evidence, I find the landlord submitted unbelievable and unreliable testimony unsupported by any evidence. I find the tenant presented credible testimony of service supported by documentary evidence. I give the greatest weight to the tenant's evidence and no weight to the landlord's testimony which I find is not credible.

Accordingly, I confirm my findings in my Decision of August 29, 2022, and Monetary Order, as follows. I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution for the August 29, 2022 hearing by sending the documents by registered mail to the landlord at the landlord's residence, the landlord confirming the address at the reconvened hearing. The tenant mailed the documents on March 1, 2022 thereby effecting service 5 days later under section 90 on March 6, 2022. The service complied with section 89.

*Confirmation of Decision and Monetary Order*

Accordingly, I confirm my Decision and Monetary Order of August 29, 2022.

Conclusion

I confirm my Decision and Monetary Order issued August 29, 2022.

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: November 07, 2022

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Residential Tenancy Branch