



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes** FFT MNECT

#### **Introduction**

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. As accommodations were made to allow the parties to appear in person rather than through the teleconference system, this hearing was not recorded by the Branch. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording.

#### **Preliminary Issue: Attendance of Tenant's Witness**

During the latter part of the hearing, the respondent raised an issue about privacy concerns and the attendance of the tenant's witness, SB. The respondent was concerned about SB's access to their private information.

The tenant testified that they were not aware of any issues, and was under the impression that they could call a witness for the hearing. SB exited the hearing.

I note that pursuant to RTB Rule 7.19, a party may call a witness at a hearing. I also note that pursuant to RTB Rule 7.20, an arbitrator may exclude witnesses from a dispute resolution hearing until called to give evidence.

I find that the respondent in this case did not raise any issues of the attendance of the witness even though the witness was identified at the beginning of the hearing. When the issue was raised, the witness exited the hearing.

I note that all hearings and decisions are confidential, and any private information disclosed in a hearing should not be shared with participants outside of the hearing.

### **Preliminary Issue – Service of the Application and Naming of Parties**

The respondent TJS attended the hearing and testified that they never received a copy of the application from the tenant. TJS testified that they obtained the information required to dial into the teleconference after receiving an email from the RTB. TJS testified that they were not the named landlord for this tenancy, as supported by the tenancy agreement and title search. The respondent provided copies of both documents in their evidentiary materials.

The tenant testified that they did serve TJS by way of registered mail, but TJS avoided service by refusing to pick up the package. The tenant expressed concern about how there was a history of TJS refusing service.

Section 89 of the *Act* establishes the following special rules for service of documents.

### ***Special rules for certain documents***

**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].*

I have reviewed the documents submitted by both parties, and I am satisfied that the party named as the landlord for this tenancy is not TJS. I am not satisfied that TJS is a designated agent for the landlord. I find that the tenant failed to name the proper landlord in this application, and although TJS may have been served by way of registered mail, the proper landlord for this tenancy was not served in accordance with the requirements of section 89 of the *Act* as noted above.

Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them and have an opportunity to review and respond to the materials submitted, the tenant's application for monetary compensation is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

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: January 10, 2023

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Residential Tenancy Branch