



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL, FFL

### Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 landlord and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that he is not recording this dispute resolution hearing.

The landlord confirmed his address for service of this Decision.

### Preliminary Issue- Service

The landlord testified that the tenant did not provide him with a forwarding address at the end of this tenancy. The landlord testified that he served the tenant with his application for dispute resolution via registered mail at the tenant's employer's head office. The landlord testified that the tenant verbally informed him that he could be

served through his employer. No documentary evidence supporting same was entered into evidence.

The landlord testified that the tenant was also served at the address of the subject rental property he vacated and that the tenant would have received the mail because the tenant had mail forwarding. No documentary evidence to support the landlord's testimony that mail forwarding was in effect was entered into evidence.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Rule 3.5 of the Rules 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(1) of the *Act* states that 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 find that the landlord has not proved, on a balance of probabilities that the tenant had mail forwarding and would have received mail sent to the subject rental property.

I find that the landlord has not proved, on a balance of probabilities that the tenant granted him authorization to serve him through his employer's head office.

I find that the landlord did not serve the tenant with the landlord's application for dispute resolution in a manner required under section 89 of the *Act* because serving the tenant's employer and serving an address at which the tenant does not reside are not authorized methods of service under section 89 of the *Act*.

I dismiss the landlord's application for dispute resolution with leave to reapply for failure to serve in accordance with section 89 of the *Act*.

I notified the landlord that if she wished to pursue this matter further, he would have to file a new application. I cautioned the applicant to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

I find that since the landlord's application was dismissed, the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

The landlord was advised that he may apply for substituted service or hire a skip tracer to locate the tenant.

Conclusion

I dismiss the landlord's application for a Monetary Order for damage or compensation, with leave to reapply.

I dismiss the landlord's application to recover the \$100.00 filing fee without 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: February 14, 2023

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Residential Tenancy Branch