



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following remedies:

1. an order for compensation for the landlord's failure to comply with section 49(3) of the Act;
2. an order for compensation for the return of their security deposit; and,
3. an order for compensation for recovery of the filing fee.

A dispute resolution hearing was convened, and the tenant's agent and the landlord attended, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were initially raised by the parties. However, issues of service of documentary evidence were raised halfway through the hearing, which is the subject of the preliminary issue in this decision.

While I have reviewed all oral and documentary evidence submitted, only evidence relevant to the preliminary issue of this application is considered in my decision.

### Preliminary Issue: Service of Documentary Evidence

After hearing substantial testimony of both parties regarding this matter, the tenant's agent testified that she never received, or had, copies of any of the landlord's documentary evidence. Likewise, the landlord testified that he did not receive copies of any of the tenant's documentary evidence.

The tenant's agent testified that she mailed the Notice of Dispute Resolution Proceeding by regular mail to the landlord, who acknowledged receiving the Notice.

A Notice of Dispute Resolution Proceeding must be served on the opposing party by one of the methods listed in section 89(1) of the Act. While section 89(1)(c) permits service by registered mail, it does not permit service by regular mail. However, where the opposing party confirms receipt of the Notice, as the landlord did in this case, I have the discretion to find that Notice was properly served pursuant to sections 71(1) and 89(1)(e) of the Act.

The tenant's agent further testified that she served the landlord copies of her documentary evidence by affixing it (within an envelope) to the landlord's mailbox. The landlord's mailbox is a mailbox amongst a bank of mailboxes, in the lobby of the building where he resides. The landlord stated he never received the evidence.

Section 88 of the Act outlines the permitted methods by which all other documents (that are not subject to service under section 89 of the Act) may be served on the opposing party. Affixing the documentary evidence to a mailbox is not a permitted method of service. Section 88(f) of the Act is clear in that the party may serve documents "by leaving a copy in a mailbox or a mail slot for the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord."

In regards to the landlord's service of documentary evidence, he testified that he served the tenant with this evidence by registered mail to the address that he had on file as being the tenant's forwarding address. He submitted into evidence a copy of the registered mail tracking number and information. It indicated that the package was never picked up by the tenant. The tenant's agent confirmed that the address to which the landlord sent the evidence is indeed the tenant's address for service.

Rule 3.5 of the *Rules of Procedure*, under the Act, states that an 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."

Taking into consideration the oral and documentary evidence of the parties, I am not satisfied that the applicant served their evidence on the landlord in compliance with the Act.

I heard submissions by both parties in respect of a possible adjournment of this matter that would permit the parties to exchange evidence.

I appreciate that the tenant's agent attempted, and made her best effort, to provide the landlord respondent with copies of the tenant's evidence. However, I do not find that service complied with the Act. The tenant's agent appealed that I adjourn the matter in the interest of fairness to allow the parties to exchange evidence.

The landlord submitted that he served his evidence in compliance with the Act and did everything correctly under the Act and was opposed to any adjournment. Further, that adjourning the matter was to the prejudice and detriment to his interests in this dispute.

After carefully considering the submissions of the parties, I find that an adjournment of this matter is not appropriate in these circumstances. The tenant's neglect in serving documentary evidence in compliance with the Act and the *Rules of Procedure* should not serve as a basis for adjournment. Doing so would unfairly prejudice the landlord, who complied with the Act in properly serving his evidence on the tenant. It is the tenant's responsibility and obligation to ensure that the Act and the *Rules of Procedure* are correctly followed when making an application for dispute resolution and when serving evidence.

### Conclusion

I hereby dismiss the tenant's application 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 Act.

Dated: November 16, 2018

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Residential Tenancy Branch