



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDCL, MNRL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 26, 2018 (the "Application"). The Landlord applied for compensation for monetary loss or other money owed, to recover unpaid rent and for reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Tenant did not appear at the hearing. I explained the hearing process to the Agent who did not have questions in this regard. The Agent provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package was sent to the Tenant's forwarding address on July 30, 2018 by registered mail. The Agent testified that the forwarding address was provided by the Tenant on the move-out notice on October 31, 2017. The Agent provided Tracking Number 1 as noted on the front page of this decision. With permission, I looked this up on the Canada Post website which shows the package was returned to the sender as the recipient is not located at the address provided.

The Agent testified that the Landlord also emailed the hearing package to the Tenant on August 16, 2018. She said the Tenant replied to this email September 11, 2018. The Agent read out the Tenant's response. I note that in the Tenant's response as read out by the Agent, the Tenant said she no longer lives in the city noted in the forwarding address provided. The Agent confirmed that the email correspondence was not submitted as evidence.

Section 89(1) of the *Residential Tenancy Act* (the “*Act*”) sets out the methods of service permitted for applications for dispute resolution requesting monetary compensation and states:

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;

...

(c) by sending a copy by registered mail to the address at which the person resides or...

(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)...

It is the Landlord, as applicant, that must satisfy me that the Tenant was served with the hearing package in accordance with the *Act*. Rule 3.5 of the Rules of Procedure 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.

I am satisfied that the Landlord sent the hearing package by registered mail; however, the Canada Post website indicates that the package was returned to the sender as the recipient, the Tenant, is not located at the address provided. I note that the Tenant provided the forwarding address on October 31, 2017 and the hearing package was not sent to that address until July 30, 2018, nine months later. I am not satisfied based on the Canada Post website information that the Tenant continued to be available at the forwarding address provided.

I note that I have no evidence before me that the Tenant received the hearing package. Further, the Tenant did not appear at the hearing.

The Agent testified that the hearing package and evidence were sent to the Tenant via email and that the Tenant responded to this email. However, neither email was

submitted as evidence. Email is not a form of service permitted under section 89(1) of the *Act*. In the absence of the email correspondence as evidence, I decline to find that the Tenant was sufficiently served with the hearing package in accordance with the *Act* and am not satisfied that the Tenant in fact received the hearing package.

In the circumstances, I am not satisfied of service and therefore dismiss the Application with leave to re-apply. This does not extend any time limits set out in the *Act*.

### Conclusion

I am not satisfied the Tenant was served with the hearing package in accordance with the *Act* and am not satisfied the Tenant received the hearing package.

The Application is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

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: December 03, 2018

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Residential Tenancy Branch