



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing was scheduled pursuant to an Interim Decision issued on September 21, 2018 in response to the landlord's Application for Dispute Resolution by Direct Request to obtain an Order of Possession and Monetary Order or unpaid rent. At the hearing, the landlord's agent appeared but there was no appearance on part of the tenant.

Since the tenant was not present for this hearing, I explored service of hearing documents upon the tenant. The landlord's agent testified that the Notice of Direct Request Proceeding was personally served upon the tenant on September 13, 2018 but that no other documents were served upon the tenant after that. The landlord's agent stated the tenant vacated the rental unit on October 1, 2018.

The Interim Decision of September 21, 2018 provides that the landlord was required to serve the tenant with a Notice of Reconvened Hearing for today's hearing and a copy of the Interim Decision within three days of receiving the Interim Decision. The landlord failed to serve the tenant with notice of this hearing and I decline to further consider the landlord's application. The landlord's application is dismissed with leave to reapply.

I noted that the landlord's Application for Dispute Resolution by Direct Request was sent to a participatory hearing because the tenancy agreement provided by the landlord contains clauses that would appear to indicate the *Residential Tenancy Act* does not apply to the agreement. Since the landlord had made an Application under the *Residential Tenancy Act*, I asked the landlord's agent whether the landlord was of the position the *Residential Tenancy Act* applied to the agreement to which the agent responded that the landlord was of the position the Act did not apply. I asked the reason why the landlord made an Application for Dispute Resolution with the Residential Tenancy Branch if the landlord was of the position the Act did not apply. The

landlord's agent explained that they had tried to have the police evict the tenant and in response the police referred the landlord to the Residential Tenancy Branch.

Upon review of the tenancy agreement submitted by the landlord it would appear that the landlord altered a tenancy agreement in a blatant attempt to avoid the Act; however, in the absence of any submissions of the tenant I do not make any finding of fact or law with respect to whether the Act applies to their agreement. Nevertheless, I informed the landlord's agent that any attempt to contract outside of the Act or otherwise avoid the Act is not enforceable and that violating the Act may subject the violator to *Administrative Penalties*.

### Conclusion

This Application is dismissed 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 *Residential Tenancy Act*.

Dated: November 02, 2018

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Residential Tenancy Branch