



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL, MNDCL, FFL;    CNR, OLC

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord and her agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had permission to speak on her behalf at this hearing.

### Preliminary Issue – Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

The landlord's agent stated that an order of possession was not required because the tenant vacated the rental unit on January 8, 2021. For the above reason, I do not issue an order of possession to the landlord. I informed the landlord and her agent of this during the hearing and they confirmed their understanding of same.

#### Preliminary Issue – Service of Landlord's Application

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package by way of registered mail on January 28, 2021. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing.

The landlord's agent said that the mail was sent to an address provided by the tenant's new landlord verbally. He stated that he saw the tenant at the new address because it was close to the rental unit. He maintained that he is not allowed to have contact with the tenant, as per the police, after a bailiff removed the tenant from the rental unit. He claimed that the tenant did not provide a forwarding address to the landlord.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

*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;*

*(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].

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report.***

Accordingly, I find that the landlord did not serve the tenant with the landlord's application, as required by section 89(1) of the *Act* and Residential Tenancy Policy Guideline 12. The tenant did not provide a forwarding address to the landlord. The landlord obtained an address verbally from a third party. The landlord did not provide documentary proof of the tenant's residential or forwarding address. The tenant did not attend this hearing to confirm service.

I notified the landlord and her agent that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed them that the landlord could file a new application and pay a new filing fee, if the landlord wishes to pursue this matter further. I notified them that they could apply for an order for substituted service under section 71 of the *Act*, if they wish to serve the tenant by a method outside of section 89 of the *Act* and they have recent documentary evidence to do so. The landlord and her agent confirmed their understanding of same.

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's 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: February 26, 2021

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Residential Tenancy Branch