



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

MND, MNR, MNDC, MNSD, & FF

### Introduction

This hearing dealt with an application by the landlord seeking a monetary claim against the tenants for the sum of \$25,000.00 due to alleged unauthorized renovations to the rental unit which will cost \$22,500.00 to repair and complete and for a month's loss rent for the sum of \$2,500.00.

The tenants did not appear for the hearing.

### *Preliminary Issues:*

There were the following preliminary issues:

1. No proof of service that the tenants had been served with notice of this application and hearing; and
2. The absence of any evidence submitted for this application from the landlord.

Regarding the issues of service and evidence the landlord submitted that an evidence package was provided to the *Residential Tenancy Branch* either at the time the application was filed or shortly afterwards and evidence of the service of documents on the tenants was provided in the evidence package.

### Analysis

The principals of natural justice and procedural fairness require that a party to a dispute be served with notice of the claims being made and provided the opportunity to respond. Sections 88 and 89 of the *Act* provide the service requirements of documents and the different methods of service.

The *Residential Tenancy Policy Guideline Manual*, section 12, speaks to proof of service of documents:

*The purpose of serving documents under the Legislation is to notify the person being served of matters relating to the Legislation, the tenancy agreement, an*

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*arbitration, or a review. Failure to serve documents properly may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.*

*Where the respondent does not appear at an arbitration hearing, the applicant must be prepared to prove service under oath. The person who actually served the documents must either:*

- *be present at the hearing, or*
- *have sworn an affidavit of service or a statutory declaration which is sworn before either a Notary Public or a Lawyer, and which is given to the arbitrator at the hearing*

*A sworn affidavit of service or statutory declaration must have sworn exhibits attached to it which are copies of each of the actual document(s) served.*

*Proof of service personally should include the date and time of service, where the person was when served, and the name of the person served.*

*Proof of service by registered mail should include the original receipt given by the post office and should include 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. Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply.*

I have no evidence before me that the landlord submitted any evidence for this proceeding, including proof of how the tenants' were served with notice of this application and hearing, to the *Residential Tenancy Branch*.

In the absence of any evidence, the tenants', and proof of service of this application and notice of hearing on the tenants, I find that this application should be dismissed with leave to re-apply.

In addition, I also considered whether there was an issue of jurisdiction as there appeared to be a tenancy agreement and a contract to purchase agreement. In the absence of the contracts I find it is not possible to resolve the issue of jurisdiction as it cannot be determined whether the alleged damaged occurred under the tenancy agreement or under the contract to purchase agreement. This will be an issue to be resolved in the event that the landlord files a new application for dispute resolution.



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## Conclusion

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*. I dismiss the landlord's application with leave to re-apply as there is no proof of service of the hearing documents and particulars of the landlord's claim on the tenants.

Dated: August 25, 2009.

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Dispute Resolution Officer