



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site, or property and to recover the cost of the filing fee from the Tenants for this application.

### Issues(s) to be Decided

1. Has the Tenant or someone allowed on the property by the Tenant breached the *Residential Tenancy Act*?
2. If so has the Landlord proven entitlement to monetary compensation as a result of that breach?

### Background and Evidence

The Landlord testified service of the Notice of Dispute Resolution packages was served personally to the female Tenant and sent via fax to the male Tenant. Initially the Landlord stated she served the female Tenant with the Notice of Dispute Resolution Hearing on July 1, 2010, then she stated she was served July 28, 2010, and then changed her testimony to service being conducted on July 29, 2010.

When asked if she provided evidence to either Tenant the Landlord began by confirming the male Tenant had vacated the rental unit long before she made application for dispute resolution and then changed her testimony to say she sent the evidence to only the male Tenant via fax at a correctional facility. Upon further clarification the Landlord stated she faxed the male Tenant with a copy of the Notice of

Dispute Resolution Hearing letter along with the evidence. The Landlord confirmed that the female Tenant vacated the rental unit on approximately August 5, 2010 and she does not know where she is currently residing.

### Analysis

The Landlord provided contradictory testimony of when the female Tenant was served with the hearing documents and stated the male Tenant was served via fax. In the absence of either Tenant, and in the presence of contradictory testimony pertaining to service of documents, I find that service of the Notices of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act*.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the Landlord's claim, with leave to reapply.

As the Landlord has not been successful with her application, I decline to award recovery of the filing fee.

### Conclusion

**I HEREBY DISMISS** the Landlord's claim, 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: December 20, 2010.

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Dispute Resolution Officer