



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, FF

### Introduction

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

- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the original hearing on October 29, 2012 and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss the landlord's application. The tenants confirmed that on August 14, 2012 they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on August 13, 2012. I am satisfied that the landlord served this original hearing package (including the Notice of Hearing for the October 29, 2012 hearing) to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Has the landlord served the tenants with the Notices of Reconvened Hearing in accordance with the direction provided in the Interim Decision of October 31, 2012 and the *Act*? If so, is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy commenced on February 15, 2011. By the end of this tenancy, monthly rent was set at \$650.00, payable in advance on the first of each month, plus 1/3 of gas and hydro for this rental property. The tenants vacated the rental unit by October 6, 2012. There was disagreement as to whether by the end of the tenancy, the tenants were responsible for one-third or one-half of the gas and hydro for this rental property.

The landlord's application for a monetary award of \$3,684.04 included requests for compensation of \$650.00 for each of May, June and July 2012. The landlord also requested compensation for \$419.54 in hydro and gas charges as of August 11, 2012, a further \$500.00 in anticipated utility costs through October 2012, and anticipated rental losses of \$1,300.00 through October 2012.

On October 31, 2012, I issued an Interim Decision in which I outlined the reasons for granting an adjournment and the reconvening of that hearing. I attached Notices of Reconvened Hearing to my Interim Decision and noted that it was the responsibility of the applicant, in this case the landlord, to serve the Notices of Reconvened Hearing along with a copy of this decision to the tenants/respondents. My decision read in part as follows:

*... The landlord is ordered to serve the tenants with the notice of hearing, in addition to any additional evidence on which the landlord intends to rely...*

At the October 29, 2012 hearing, the landlord said that he did not have the tenants' current mailing address. In my Interim Decision, I reported this aspect of the October 29, 2012 hearing in the following terms:

*... The tenants testified that they would contact the landlord directly by telephone to provide him with their new mailing address so that he would be able to serve them with any new written evidence he may have for the reconvened hearing. The tenants refused to provide their address to the landlord at the hearing because of the presence of the landlord's agent. I advised the tenants that I would consider any written evidence submitted by the landlord as admissible if they did not follow through with their commitment to provide him with their mailing address by telephone in a timely fashion...*

#### Background and Analysis – Service of Notices of Reconvened Hearing

The landlord testified that he had been unable to serve the tenants with the Notices of Reconvened Hearing. Although the male tenant had visited the rental property a number of times since the hearing, the landlord testified that the tenant did not provide the landlord with the tenants' forwarding address. The landlord said that he has been unable to serve the tenants with the Notices of Reconvened Hearing, and did not know if they were aware of the date and time for this reconvened hearing.

I should first state that I am sympathetic to the landlord's predicament. The tenants have not followed through with the commitment they made at the October 29, 2012 hearing that they would provide the landlord with their forwarding address. As outlined above and as reported in my Interim Decision, I did advise the tenants that I was prepared to consider any new written evidence that the landlord submitted if the tenants did not abide by their commitment to provide the landlord with their forwarding address. I would remain willing to do so and proceed to hear the landlord's application for a monetary award if the landlord had served the Notices of Reconvened Hearing to the tenants. However, the landlord has not served these Notices to the tenants. As such, there would be a contravention of a fundamental principle of natural justice if I were to proceed with a hearing without the tenants being notified of how and when they could

participate in that hearing. As was noted in my Interim Decision, the applicant is responsible for serving Notices of Hearing to the respondent(s).

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order:

*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 document]...*

Although I am satisfied that the landlord served copies of his application for dispute resolution, including the original Notice of Hearing for the October 29, 2012 hearing to both tenants, he has not served the Notices of Reconvened Hearing to either tenant as required by section 89(1) of the *Act*. For these reasons and as explained during the reconvened hearing, I am not satisfied that the tenants/respondents have been properly served with the Notices of Reconvened Hearing scheduled for December 6, 2012 at 1:30 p.m. I dismiss the landlord's application with leave to reapply.

By the time the hearing was reconvened, I had reviewed written evidence that the landlord had asked to be considered as part of a request to join the tenant's application with the tenants' previous application for dispute resolution. By December 6, 2012, I was aware that the individual who had identified herself as the translator/agent/witness at the October 29, 2012 hearing of the landlord's application was actually the other tenant in the landlord's rental property. This other tenant had been involved in an earlier hearing regarding this tenancy, an application by the tenants to cancel the landlord's notices to end tenancy for unpaid rent and for cause.

At the commencement of the reconvened hearing, I asked the other tenant to clarify whether she could in fact translate for the landlord from the language with which he is most familiar. She said that she did not speak the landlord's native tongue, but intended to act as his agent. Since a significant portion of this dispute related to payments for utilities made by the other tenant, I found no reason to avoid dealing with

the landlord directly with respect to his application. He was present at both hearings and I found his ability to communicate in the English language more than adequate for the purposes of conducting this hearing. The other tenant agreed to leave the room where the landlord was participating in this teleconference hearing and return as a witness if her involvement became necessary.

After listening to the landlord's evidence and explaining why I could not proceed with this hearing, I agreed to the landlord's request to allow the other tenant to return to the room where he was located. The landlord said that he would like the other tenant's assistance in understanding why I could not make a finding on his application. As I wanted to ensure that the landlord truly understood why I could not proceed, I asked the landlord to call the other tenant into the room so that I could speak with both of them together. At this point, I reiterated my findings to the other tenant in an effort to ensure that the landlord properly understood why I could not proceed with this hearing. I advised them that I would be sending a written decision outlining my reasons for dismissing this application with leave to reapply to the landlord.

#### Conclusion

I dismiss the landlord's application 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 6, 2012

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Residential Tenancy Branch