



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, MND, MNDC, FF, MNSD, CNR, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by both the Tenant and the Landlord.

The Landlord applied for an Order of Possession because the Tenant has breached an agreement with the Landlord; a Monetary Order for damage to the rental suite; and 'Other' issues of which none were identified. The Tenant applied to cancel a notice to end tenancy for unpaid rent or utilities and for a Monetary Order for the return of the security deposit. Both parties also applied for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (the "Act") and the recovery of the filing fee for the cost of making their applications.

The Landlord appeared for the hearing and provided affirmed testimony during the hearing and documentary evidence in advance of the hearing. The husband of the Tenant named on the application appeared for the hearing with a legal advocate who also acted as a translator; the husband testified that he was a Co-tenant in this tenancy and provided affirmed testimony during the hearing. The Tenant also provided documentary evidence in advance of the hearing. The Tenant's legal advocate took an affirmation that she would translate accurately for the Co-tenant during the hearing.

The Landlord testified that she served the Tenant with the Notice of Hearing documents on February 2, 2014 by serving them to a person who she named in the hearing and who purported to represent the Tenant in the capacity of a legal representative. However, the Tenant's legal representative produced this person as a witness who testified under affirmation that the Landlord had served him on February 5, 2013. The Landlord also testified that she had served a copy of the documentary evidence to the Tenant in person on March 12, 2013 at the Residential Tenancy Branch office when she was submitting a copy to the office. The Co-tenant denied receipt of this evidence and it was not before the Tenant at the time of the hearing.

The Co-tenant testified initially that the Landlord had been served with the Notice of Hearing on March 11, 2014; however, the Co-tenant was unable to identify the date the Landlord was served. The Tenant's application shows that the application was amended on March 11, 2014 but the application was made on February 3, 2014. The Landlord testified that she did not receive any documents from the Tenant until March 11, 2014 when she became aware of the Tenant's application. The Co-tenant then testified in response that he had served the Landlord with the paperwork on February 4, 2014 which was disputed by the Landlord.

### Analysis

Section 59(3) of the Act provides that an applicant making an Application for Dispute Resolution must serve a copy of the application and Notice of hearing documents to the respondent within 3 days of receiving the paperwork from the Residential Tenancy Branch.

In this case, I find that neither party had served the Notice of Hearing documents to each other in accordance with the Act and in the absence of any corroborative evidence to suggest otherwise, I was unable to hear the applications before me.

As the parties did not have the documentary evidence relating to each other's claims, I was unable to progress the hearing with the consent of both parties. As a result, I dismiss the Tenant's and Landlord's applications with leave to re-apply.

At the conclusion of the hearing both parties were encouraged to work together to reach an amicable solution to the issues associated with this tenancy before considering making another application.

I also drew the attention of both parties to the following sections under the Act: deeming provisions under Section 90, the Landlord and Tenant obligations in relation to repairs under Section 32 and 33 and Section 38(1) and 38(6) in relation to the return of a security deposit at the end of tenancy.

The Landlord confirmed the address on her application as the address the Tenants may use to make a subsequent application. However, the Tenants did not provide a forwarding address during the hearing and were cautioned about the requirements to provide one in relation to the return of the security deposit. However, the legal advocate provided an address only for the purposes of mailing this decision.

Conclusion

For the above reasons, the Landlord's and Tenant's applications are both dismissed with leave to re-apply.

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: March 20, 2014

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Residential Tenancy Branch

