



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This is an application for a monetary order for \$5000.00 and a request for recovery of the \$100.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony.

All testimony was taken under affirmation.

### Issue(s) to be Decided

The first issue I dealt with was whether or not this claim has been barred by statute.

### Background and Evidence

The applicant originally filed a claim with the executor against the estate of the respondent however the executors lawyer acting on behalf of the executor sent a letter to the applicant stating that they were rejecting the claim and availing themselves of section 66 of the Estate Administration Act (which was in force at the time but has now become the Wills, Estates and Succession Residential Tenancy Act) which states:

#### **Limitation period for disputed claims against estate**

**66** (1) This section applies if an executor or administrator gives notice in accordance with subsection (2) to

(a) a creditor or person of whose claim against the estate the executor or administrator has notice, or

(b) the attorney or agent of the creditor or person.

(2) The notice must

(a) be in writing,

(b) give notice that the executor or administrator rejects or disputes the claim, and

(c) refer to this section and give notice of the intention of the executor or administrator to take advantage of it.

(3) If notice is given in accordance with this section, the claimant must commence the claimant's action in respect of the claim whichever of the following is applicable:

(a) within 6 months after the notice is given, if the debt or a part of it is due at the time of the notice;

(b) within 6 months of the time the debt or a part of it falls due, if no part of it is due at the time of the notice.

(4) If the claimant's action is not commenced within the applicable time under subsection (3), the claim is forever barred.

(5) Subsection (4) does not bar a claim by a beneficiary of the estate with respect to a claim by the beneficiary against the estate in the person's capacity as a beneficiary.

The letter was sent to the applicant on June 13, 2013, and although the applicant states she did not receive it right away, she admits that she did receive the letter by December of 2013.

### Analysis

I have reviewed the letter that was sent to the applicant and it did comply with the requirements of section 66 of the Estate Administration Act that was in place at the time.

The notice was in writing, it gave notice that the executor disputes the claim, and not only refers to but included a copy of the full section 66 of the Estate Administration Act.

Therefore it is my finding, that since the applicant did not commence her action to pursue her claim within six months of receiving the letter rejecting the claim, the claim is

forever barred, pursuant to section 66(4) of the Estate Administration Residential Tenancy Act.

Conclusion

I dismiss this full claim as it has been barred by statute, and I have issued an Order for the applicant to return the tenants full Security deposit of \$375.00.

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: April 02, 2015

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Residential Tenancy Branch

