



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC MNR MNSD FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for damage and loss at the end of this tenancy pursuant to section 67; authorization to retain the tenants' security deposit in satisfaction of the monetary order pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:25 pm in order to enable the tenants to connect with this teleconference hearing scheduled for 1:00 pm. One of the landlords, Landlord R ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

### Preliminary Issue: Proof of Service and Substantive Claim

The landlord testified that the tenants were both individually served with the landlords' Application for Dispute Resolution ("ADR") including the Notice of Hearing by registered mail to the tenants' forwarding address however the landlord was unable to provide the date that the ADR was mailed or any information relating to the mailing. The landlord did not submit receipts with respect to the mailings prior to the hearing date.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process to notify the respondent(s) of the application and the hearing information related to the application. Service of documents is restricted by timelines and methods of service to underscore its importance. Beyond proper service, it is also essential that a party be able to **prove** that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing.

Residential Tenancy Policy Guideline No. 12, in considering the terms of service at section 88 to 90 in the *Act* states that, when the respondents do not appear at a Dispute Resolution hearing, the applicants must be prepared to **prove service under oath**. While the landlord provided testimony that the tenants were served with the documents

to provide notification of this hearing, he was unable to provide any details, including the date of service or any documentary evidence to support this testimony.

Prior to considering the details of the applicant's claim, I must be satisfied that the landlords/applicants sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing. Based on the lack of detail and evidence submitted by the landlord to prove the tenants were served with the Notice of Hearing and the rest of the ADR package, I find that the landlord has not sufficiently proven that the tenants were in fact served in accordance with the *Act* allowing the tenants to be aware of the landlord's application and this dispute resolution hearing. Therefore, I dismiss the landlords' application with leave to reapply.

*I note that the landlord submitted photographs of the rental unit at the end of the tenancy. However, there is no detailed calculation to explain how the landlords arrived at the amount they seek. Pursuant to section 59(2)(b) of the Residential Tenancy Act, an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself.*

*Section 67 of the Act requires that, when an applicant makes a claim for damage that applicant bears the burden of proof. The applicants (landlords) must prove the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act by the tenants and they must provide evidence that can verify the actual monetary amount of the loss or damage.*

### Conclusion

I dismiss the landlord's application in its entirety 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: April 22, 2016

---

Residential Tenancy Branch