



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants (male and female) and "landlord CL" did not attend this hearing, which lasted approximately 24 minutes. Landlord AL ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to represent her husband, landlord CL, also named in this application, as an agent at this hearing (collectively "landlords").

### Preliminary Issue – Service of Landlords' Application

The landlord testified initially that she did not know the date when the tenants were served with the landlords' application for dispute resolution hearing package. I provided the landlord with additional time to look through her paperwork during the hearing, in order to obtain service information.

The landlord then stated that service occurred on February 24, 2017. When I inquired as to how she served the application prior to filing it on March 8, 2017, she then claimed that it was served on March 24, 2017, after looking through her calendar. She said that her husband served the female tenant personally, with a witness present. The landlord claimed that her husband and the witness could not attend the hearing to testify. When I asked why the application was not served within three days of filing, as required, she said that she believed it was.

As per section 59(3) of the *Act*, the landlords are required to serve their application upon the tenants within three days of filing it. During the hearing, the landlord provided three different answers regarding the date when the application was served. The landlord was consulting a calendar to provide service dates, without firsthand knowledge, only hearsay. Landlord CL did not appear at this hearing and neither did the witness for service. The March 24, 2017 date is not within three days of filing, yet the landlord said that she believed it was served within three days. Section 89 of the *Act* requires the landlords to serve a copy of the application to each tenant, not just one tenant. For the above reasons, I find that the landlords did not serve the tenants with the application as required by section 89 of the *Act*.

At the hearing, I advised the landlord that the landlords' entire application was dismissed with leave to reapply, with the exception of the filing fee. I notified her that she could file a new application and pay a new filing fee, if she wished to pursue this matter further. I informed her that she would be required to prove service at the next hearing.

#### Conclusion

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of the landlords' application is dismissed 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: August 03, 2017

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Residential Tenancy Branch