



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding JENCO INVESTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on June 26, 2018. The Landlord applied for a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

Five individuals attended the hearing on behalf of the Landlord, and each were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that the Tenant had been served the Application for Dispute Resolution and Notice of Hearing documents by Canada Post Registered mail; however, the Landlords were not able to testify as to the date that the registered mail had been sent or provide a tracking number for the mailing. Additionally, the Landlord testified that they had personally served the Tenant with the Application for Dispute Resolution and Notice of Hearing documents, on July 25, 2018. Although I find that the Landlord has served the hearing documents late, I do find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision

### Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

The Landlords testified that at the tenancy began on February 11, 2018, and that the Tenant paid the rent for February 2018 but did not pay rent for the unit again. The Landlords also testified that they sent a written tenancy agreement to the Tenant to sign but that the agreement was never returned to them signed. When asked the Landlords were not prepared to testify as to the date that the tenancy ended. The Landlords provided 37 pages of an email string between themselves and the Tenant, into documentary evidence.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlords that there was no signed tenancy agreement between these parties for the rental unit. I find that throughout this hearing the Landlords were not prepared to answer simple questions regarding the history of this tenancy.

Section 13 of the Act requires a Landlord to create a written tenancy agreement.

### **Requirements for tenancy agreements**

**13 (1)** A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

I find that the Landlords, in this case, are in breach of section 13 of the *Act* by not ensuring that a written tenancy agreement was signed between the parties to this dispute. In the absence of that document, I must rely on the additional documentary evidence provided by the applicant/Landlord to prove that a tenancy agreement existed between these parties.

I have reviewed all of the documentary evidence submitted by the Landlord and although I find that there is evidence to show that the parties to this dispute were involved in a conversation regarding several different tenancy agreements. I find that there is insufficient evidence before me to prove that a tenancy agreement existed between these parties for the rental unit in question in these proceedings. Therefore, I must dismiss the Landlords' application for a monetary order for unpaid rent.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee.

### Conclusion

I dismiss the Landlord's claim, for monetary order for unpaid rent and the recovery of their filing fee.

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: October 29, 2018

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Residential Tenancy Branch