



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL-S MNRL-S OPR FFL (landlord); CNR (tenant)**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession pursuant to section 46;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 49.

The hearing was conducted by teleconference. The landlord appeared with property agents JG and AG (“the landlord”). The landlord was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

*Preliminary Issue 1 – Service of Notice of Hearing and Application for Dispute Resolution on tenant AG*

The tenant AG did not attend the teleconference. I kept the teleconference line open from the scheduled time for the hearing for the duration of the arbitration (50 minutes) to allow the tenant AG the opportunity to call. The teleconference system indicated the tenant AG did not call in to the hearing. I confirmed the correct call-in number and participant code for the tenant AG were provided.

The landlord testified she sent the Notice of Hearing and Application for Dispute Resolution to the tenant AG by registered mail sent on February 28, 2019 to the unit where the tenant AG resided. The landlord provided the Canada Post tracking numbers in support of service referenced on the first page of this decision.

Further to sections 89 and 90, I find the landlord served the tenant AG with the Notice of Hearing and Application for Dispute Resolution on March 5, 2019, five days after mailing.

*Preliminary Issue 2 – Service of the Notice of Hearing and Application for Dispute Resolution on tenant JM*

The tenant JM attended the teleconference, was affirmed, and provided evidence.

The landlord testified she sent the Notice of Hearing and Application for Dispute Resolution by registered mail to the tenant at the address of the unit on February 28, 2019. The landlord provided the tracking number in support of service to which I refer on the first page of the decision.

The tenant JM testified he had not received the documents as he had vacated the unit in December 2018. The landlord acknowledged that when she served the tenant JM at the address of the unit, she knew the tenant JM no longer lived there. She served him at the unit as she had no other address for him.

The tenant JM testified that he received an unsolicited email from the RTB before the hearing informing him of the date. This was the first he knew of the hearing scheduled for this day.

Upon receiving the email from the RTB, the tenant JM testified that he believed the RTB was notifying him he was *required* to attend the hearing, even though he had not been served with Notice of the Hearing by the landlord. This was the *only* reason he attended the hearing.

The parties agreed that the tenant JM sent an email to the landlord after receiving the unsolicited hearing reminder email from the RTB. He provided his current address for service of the Notice of Hearing and Application for Dispute Resolution. The landlord did not affect service at that address and the tenant JM did not receive the documents.

Service of dispute resolution documents is set out in section 89 of the *Act* which states [emphasis added]:

**89 (1) An application for dispute resolution ... must be given in one of the following ways:**

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address **at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail **to a forwarding address provided by the tenant;***
- (e) as ordered by the director under section 71 (1) ...*

The landlord knew the tenant JM no longer resided at the address to which she sent the Notice of Hearing and Application for Dispute Resolution documents. The landlord had a new address for the tenant JM and did not affect service at that address.

Therefore, I find the landlord has failed to establish that the landlord served the tenant JM with the Notice of Hearing and Application for Dispute Resolution as required under the provisions of section 89. Accordingly, I dismiss the landlord's application against the tenant JM with leave to reapply.

*Preliminary issue 3: service of Amendment upon tenant AG and tenant JM*

The landlord testified that on February 27, 2019 she filed an Amendment to her claim increasing the monetary order requested to \$27,950.00. The landlord testified she served each of the tenants that day by separate registered mail and provided the tracking numbers in support of service referenced on the first page.

Pursuant to sections 89 and 90, I find the landlord served the tenant AG with these documents five days after mailing, that is on March 5, 2019.

For the reasons provided above, I find the landlord has not established that the landlord served the tenant JM with these documents as required under section 89.

*Preliminary issue 4 – Tenant AG’s application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”)*

The landlord testified the Ten-Day Notice was served by registered mail on the tenant AG sent on February 6, 2019 thereby affecting service under section 90 five days later, that is, on February 11, 2019. On February 19, 2019, the tenant AG applied to cancel the landlord’s Ten-Day Notice dated February 6, 2019.

The tenant vacated the unit on March 20, 2019. The tenant AG did not appear at the hearing.

As the tenant AG did not attend the hearing and has subsequently vacated the unit, I dismiss the tenant AG’s application to cancel the Ten-Day Notice without leave to reapply.

*Preliminary Issue 5 – Landlord’s monetary claim and severance*

The landlord testified that at the end of the tenancy, the landlord discovered substantial damage to the unit requiring considerable repairs. The repairs are undergoing, and the landlord does not have final receipts to support a monetary award for damages.

Accordingly, the landlord requested that this hearing address only the matter of outstanding rent, the security deposit and the filing fee. The landlord requested that her application for damages and compensation other than rent for February and March 2019 be dismissed with leave to reapply.

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules”) states arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find the issue of outstanding rent for February and March 2019 is not related to the issue for damages for repairs or related claims. The only issues at this hearing were the claims by the landlord for a monetary order for unpaid rent for February and March 2019, authorization to retain the security deposit in satisfaction of any monetary award, and reimbursement of the filing fee. I accordingly dismiss the remainder of the landlord’s application for damages and compensation under section 67 with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted evidence that she entered a one-year fixed term tenancy with both tenants starting December 1, 2018 for rent of \$3,000.00 a month payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$1,500.00 which is still held by the landlord. The tenants have not provided written authorization to the landlord to retain the security deposit. The landlord submitted a copy of the agreement signed by all parties as evidence.

The landlord testified that the tenants did not pay rent for the months of February or March 2019 and rent is outstanding in the amount of \$6,000.00.

The landlord testified that she issued a Ten-Day Notice dated February 6, 2019 for nonpayment of rent due February 1, 2019 which she served on February 11, 2019 as referenced above. The landlord filed an application for dispute resolution for an order of possession, damages, outstanding rent, retention of the security deposit and reimbursement of the filing fee on February 22, 2019.

The landlord testified that rent is outstanding and owed by the tenants for February and March 2019 in the amount of \$3,000.00 for each month for a total rent owing for these two months of \$6,000.00. The landlord requested a monetary award in this amount.

The landlord also requested reimbursement of the filing fee of \$100.00.

The landlord requested authorization to apply the security deposit of \$1,500.00 to the monetary award.

The landlord's claim for a monetary award of **\$4,600.00** is summarized as follows:

ITEM	AMOUNT
Outstanding rent February and March 2019	\$6,000.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,500.00)
<b>Total Claim by Landlord =</b>	<b>\$4,600.00</b>

### Analysis

As the tenant JM has not been served with the Notice of Hearing documents, I make no findings with respect to him and dismiss the landlord's application against him with leave to reapply.

I accept the landlord's uncontradicted testimony and find the tenant AG failed to pay rent for the months of February and March 2019 in the amount of \$3,000.00 for each month. I accordingly award the landlord \$6,000.00 for outstanding rent for the months of February and March 2019 against the tenant AG.

As the landlord has been successful in her claim, I award her reimbursement of \$100.00 for the filing fee, for a total monetary award of \$6,100.00 against the tenant AG.

Pursuant to the offsetting provisions of section 72, I authorize the landlord to apply the security deposit of \$1,500.00 to the monetary award. I grant the landlord a monetary order in the amount of \$4,600.00.

My award is summarized as follows:

ITEM	AMOUNT
Outstanding rent February and March 2019	\$6,000.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,500.00)
<b>Total Award Against the tenant AG =</b>	<b>\$4,600.00</b>

The landlord's application for outstanding rent for any subsequent months as well as for damage and compensation for repairs is dismissed with leave to reapply.

Conclusion

The landlord is entitled to a monetary order against the tenant AG in the amount of **\$4,600.00** for outstanding rent for February and March 2019 and reimbursement of the filing fee less the security deposit paid by the tenants.

The landlord's application against the tenant JM is dismissed with leave to reapply. The landlord's application for additional rent, damages and compensation pursuant to section 67 is dismissed with leave to reapply.

This order must be served on the tenant AG. If the tenant AG fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an Order of that Court.

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 10, 2019

---

Residential Tenancy Branch