



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant: **FFT, OLC, RR;**

Landlord: **MNRL-S, MNDCL-S, MNDL-S, OPU, FFL**

### Introduction

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

- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72

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

- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 48 and 55;
- A monetary order for compensation for damage or loss 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*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant attended with the lawyer HT (“the tenant”). The landlords attended with the advocate EK. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The hearing process was explained, and all participants were provided the opportunity to ask questions.

The parties preferred to speak in Punjabi, and the advocates translated the proceedings.

At the outset, neither party acknowledged receipt of the other parties’ materials. During the 81-minute hearing, considerable conflicting testimony was submitted by the parties on the issue of service of their respective documents. Each party accused the other of not telling the truth on all issues.

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims regarding service and my findings are set out below.

#### *Service by Tenant upon Landlord*

The tenant testified that the tenant and an accompanying witness personally served the landlord on February 15, 2020 with the Notice of Hearing and evidence package. The tenant testified that service was video recorded. The witness to the service was not called, and the tenant submitted no supporting evidence such as the video confirming that service had been made. The landlord vehemently denied service.

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

**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) [director's orders: delivery and service of documents].*

I have considered all the evidence. As the tenant has submitted no evidence in support of her testimony that the tenant personally served the documents, conflicting testimony being provided by the landlord, I find the tenant has not met the requirement under section 89 regarding service. I find the landlords were not served as required.

Accordingly, I dismiss the tenant's application with leave to reapply.

*Service by Landlords upon Tenant*

The landlords testified they served the Notice of Hearing and evidence package by posting to the tenant's door on February 29, 2020. The tenant denied the posting took place. The landlord submitted no documentary evidence in support of the posting, such as a photograph.

The landlords also testified they served the documents by registered mail but did not provide the tracking number or date of mailing.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

I have considered all the evidence. As the landlord has submitted no documentary evidence in support of the testimony that the landlords personally served the documents and served by registered mail, conflicting testimony being provided by the tenant, I find the landlords have not met the requirement under section 89 regarding service and the deeming provision is rebutted. I find the tenant was not served as required under the *Act*.

Accordingly, I dismiss the landlords' application with leave to reapply.

Conclusion

Both Applications are set aside 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: March 24, 2020

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Residential Tenancy Branch