



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 30 minutes. The landlord and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had permission to speak on his behalf.

The hearing began at 1:30 p.m. with me and the landlord present. The landlord's agent called in late at 1:35 p.m. I informed him of what occurred in his absence. The landlord's agent disconnected from the hearing, without warning, at 1:52 p.m. He did not call back. The hearing ended at 2:00 p.m.

### Preliminary Issue – Inappropriate Behaviour by the Landlord's Agent during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*

*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout the conference, the landlord's agent interrupted me, argued with me, and made inappropriate comments towards me. I asked him to allow me to speak and to ensure only one person was speaking at a time, so I could hear what was happening and conduct the hearing efficiently. When I asked him questions about the landlord's application, he became upset and said, "you told me to shut up so I'm not talking." I repeated and clarified questions for the landlord's agent throughout the hearing. When I spoke, the landlord's agent continued interrupting me, saying "you have a nasty habit of interrupting me."

I cautioned the landlord's agent multiple times to stop his inappropriate behaviour. However, I allowed him to attend the full hearing, despite his behaviour, in order to allow him the opportunity to assist the landlord. He disconnected from the conference without advising myself or the landlord. The landlord was surprised that his agent suddenly left the hearing, without warning.

I caution the landlord's agent to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and he may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord's agent.

#### Preliminary Issue – Service of Landlord's Application

The landlord's agent stated that he served the tenant with the landlord's application for dispute resolution hearing package by "certified mail." The landlord's agent did not provide a date or Canada Post tracking number during the hearing. He said that he submitted a receipt, but he did not have the information in front of him during the hearing. He claimed that he would have to call someone.

The landlord's agent explained that the application was served more than a year ago, maybe 18 months. He referenced a previous Residential Tenancy Branch ("RTB") hearing but did not provide any details of same. I notified him that the notice of hearing was dated December 5, 2019, so he could not have served the notice and application, prior to filing it.

Accordingly, I find that the landlord failed to prove service of his application in accordance with section 89 of the *Act* and the tenant was not served with the landlord's application. The tenant did not appear at this hearing to confirm service of the above documents. The landlord did not provide a date or Canada Post tracking number to confirm service.

For the landlord's information, Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report**.*

I notified the landlord that his application was dismissed with leave to reapply, except for the filing fee. I notified him that he would be required to file a new application, pay a new filing fee, and provide proof of service at the next hearing, if he wished to pursue this matter further. The landlord confirmed his understanding of same.

I notified the landlord that he could get a lawyer to obtain legal advice regarding limitation dates and other legal questions he asked during the hearing. He confirmed his understanding of same.

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of the landlord's 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: May 04, 2020