



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU, MNRL-S, MNDCL-S, FFL

### Introduction and Preliminary Matters

On July 21, 2020, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation for unpaid rent and utilities pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing with D.F. attending as their agent; however, the Tenant did not make an appearance during the 44-minute hearing. All in attendance provided a solemn affirmation.

Y.F. advised that he gave the Notice of Hearing package to another tenant on the property to serve to the Tenant. This other tenant then gave the package to his wife to serve to the Tenant. While Y.M. stated that this package was served to the Tenant, he could not confirm how it was served by this other person, or when it was served. Based on this undisputed testimony, as there was no proof of how or when the Tenant was served the Notice of Hearing package, I have dismissed the Landlords’ Application with leave to reapply.

During the hearing, it was also determined that the residential tenancy started on September 8, 2019 and that the residential tenancy ended when the parties engaged into a commercial tenancy, starting on January 1, 2020. This is confirmed by the parties in a Decision of another Dispute Resolution proceeding (the relevant file number is noted on the first page of this Decision). Rent during the residential tenancy portion of the tenancy was established at \$1,600.00 per month and was due on the first day of each month. A security deposit of \$800.00 was also paid, and while the tenancy

agreement required that the Tenant pay a \$100.00 pet damage deposit, the Tenant never paid this. A copy of the signed tenancy agreement was submitted into evidence.

Furthermore, as the residential tenancy portion of the tenancy ended on January 1, 2020, I find that the Notice is not valid. As such, the Notice of July 8, 2020, that is the subject of this dispute, is cancelled and of no force or effect.

As the Landlords were not successful in this Application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on the above, as the residential tenancy has ended, the Landlords' Application for an Order of Possession is dismissed without leave to reapply and the Notice of July 8, 2020 is cancelled and of no force or effect.

However, the Landlords' Application for monetary compensation for the residential tenancy portion of the tenancy is dismissed with leave to reapply. The Landlords are not able to claim for monetary compensation, through the Residential Tenancy Branch, for any loss suffered during the commercial tenancy portion of the rental unit.

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 27, 2020

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Residential Tenancy Branch