



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Metcap Living Management Inc and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-PP, MNRL-S, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order of Possession - Section 55;
3. An Order to retain the security deposit - section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. The Landlord appeared and was given full opportunity to be heard, to present evidence and to make submissions.

### Issue

Has the Landlord served the Tenants with its application for dispute resolution as required under the Act?

### Facts

The Landlord confirms that it served the Tenants with a 10-day notice to end tenancy for unpaid rent (the “Notice”) on September 21, 2020 by registered mail. The Landlord confirms that the effective date of the Notice is set out as October 6, 2020. The Landlord confirms that it has no evidence that the Tenants disputed the Notice. I note that the Residential Tenancy Branch has no application from the Tenants in relation to a dispute of the Notice. The Landlord confirms that it has no evidence that after October 6, 2020 the Landlord determined whether the Tenants had moved out of the unit or

were not intending to move out of the unit. The Landlord confirms that on October 31, 2020 it served its application for dispute resolution and notice of hearing to each of the Tenants at the dispute unit address. The Landlord has no evidence that the Tenants are still residing at the unit or were residing at the unit when the registered mail was sent. The Landlord confirms that the tracking information for the registered mail indicates that the registered mail was not collected by the Tenants.

Section 46(5) of the Act provides that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution within 5 days receipt of the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date. Section 89(1) of the Act provides that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, 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*].

As the Tenants did not dispute the Notice, I find that the Tenants were conclusively presumed to have accepted the end of the tenancy on the effective date of October 6, 2020 and were required to move out by that date. There is no evidence that the Tenants did not vacate the unit on or before the effective date of October 6, 2020. There is no evidence that the Tenants intended to remain in the unit past the effective

date of the Notice. There is no evidence that at the time the application for dispute resolution was served to the dispute unit address the Tenants were residing at that address. For these reasons I find that the Landlord has not provided sufficient evidence to substantiate that it served its application to the Tenants' residence. I therefore dismiss the application with leave to reapply.

Conclusion

The 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 Act.

Dated: November 27, 2020

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Residential Tenancy Branch