



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

TT: **CNR, FFT**

LL: **MNRL, FFL**

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended, assisted by a friend, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenants with their application and evidence by email and subsequently by leaving it with the tenant’s 15-year old child.

## Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing** – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

As the tenants did not attend this hearing to pursue their application, I dismiss the tenants' claim in its entirety without leave to reapply.

While I have dismissed the tenants' application, the landlord testified that they are no longer acting as landlord and the tenancy has been assumed by the new owners of the property. As such, I decline to issue an Order of Possession for the landlord as they testified they have no interest in the subject property.

Section 89(1) of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,..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 document]...*

I find that the landlord has provided insufficient evidence in support of their position that they have served the tenant with the application and evidence. I find the testimony of the landlord that they have emailed or left a copy of their application with a minor who resides with the tenants to not be supported in any documentary materials and if true are not methods of service permitted under the Act. Based on the evidence I am not satisfied that the tenant was served in accordance with the Act, or at all.

Consequently, I dismiss the landlord's application with leave to reapply.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: December 8, 2020

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Residential Tenancy Branch