



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNRL-S, MNDCL-S, FFL, OPR

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for October 1, 2020. The hearing was adjourned at the request of the landlord as they were awaiting a decision on a direct request proceeding application.

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and their agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, their agent, and I were the only ones who had called into this teleconference.

### **Preliminary Issue - Service of the Landlord's Application for Dispute Resolution**

The landlord's agent testified that they have not seen the tenants since October 22, 2020, and believe that the tenants have abandoned the property. The landlord's agent testified that they have been unable to serve the tenants with the Notice of Hearing for this hearing and the Interim Decision.

I note that in my interim decision dated October 2, 2020 I ordered the following; “I order that upon receiving the new hearing date, that the landlord serve the tenants with the notice of hearing, a copy of this interim decision, as well as the original hearing package and evidence for this application.”

Section 89 of the *Act* establishes the following special rules for service of documents.

***Special rules for certain documents***

**89** (1) *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].*

*(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:*

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*

*(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

The landlord's agent testified that they were unsure of the tenants' whereabouts, and that they could not confirmed that the tenants were served with the Notice of Hearing or abovementioned documents.

As the tenants were not in attendance at the hearing to confirm that they have received the dispute resolution package or Notice of Hearing, and in light of the evidence before me, I am not satisfied that the landlord had provided sufficient evidence to support that the tenants were served in accordance with section 89 of the *Act*. I therefore dismiss the landlord's entire application with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

### **Conclusion**

The landlord's application is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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 14, 2020

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Residential Tenancy Branch