



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDL-S, MNRL-S, MNDCL-S, FFL**

### **Introduction**

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

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant 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 and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant has not provided a forwarding address as of the date of the hearing. They testified that they employed a skip tracer to locate the tenant and served them by registered mail sent to an address provided by the skip tracer as the address of the tenant on September 15, 2020.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?

## Background and Evidence

This fixed-term tenancy began in June, 2018 and ended sometime in December, 2018 when the tenant vacated the rental unit. A security deposit of \$1,150.00 was collected at the start of the tenancy and is still held by the landlord. No forwarding address has been provided by the tenant to the landlord as of the date of the hearing.

## Analysis

Pursuant to section 39 of the *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy the landlord may keep the deposit and the right of the tenant to a return is extinguished.

I accept the evidence of the landlord that this tenancy ended in December 2018 and the tenant has not provided a forwarding address as at the date of the hearing, December 17, 2020. Therefore, as it has been more than one year since the end of the tenancy and the tenant has not provided a forwarding address the landlord is entitled to retain the full deposit.

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

*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]...*

The landlord testified that as the tenant had not provided a forwarding address, they have served the tenant at an address they were provided by a skip tracer who reported that this is the current address of the tenant. I find that an address informed by a skip tracer is not a forwarding address provided by a tenant. I find there is insufficient evidence that the address provided is an address at which the tenant could reasonably be served. I find that sending the hearing package to an address informed by a third party does not satisfy me that the tenant was served in a manner consistent with section 89(1) of the *Act* or at all. I accordingly find that the tenant was not properly served with

the application for dispute resolution and consequently dismiss the landlord's application with leave to reapply.

Conclusion

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 17, 2020

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Residential Tenancy Branch