



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Armstrong Hotel  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, RPP, FFT

### Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for the landlord to return the tenants' personal property, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

### Preliminary Issue- Amendment

Tenant J.S. testified to his legal name. The tenant's application uses the tenant's middle name as his first name. The tenant testified that he goes by his middle name, not his first name. Pursuant to section 64 of the *Act*, I amend the tenants' application to state both names.

Preliminary Issue- Service

The tenants testified that in November of 2020 their nephew served the landlord with this application for dispute resolution and that the landlord was served via registered mail. No proof of service documents were entered into evidence. The tenants were unable to provide me with the tracking number for the registered mail.

Section 89 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]...*

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the tenants have not proved, on a balance of probabilities, that the landlord was served with this application for dispute resolution in accordance with section 89 of the *Act* as no proof of service documents were entered into evidence and the tenants did not provide me with the registered mail tracking number in the hearing. For failure to prove service, I find that the tenants' application is dismissed with leave to reapply.

After I dismissed the tenants' application for dispute resolution, the tenants requested that this matter be adjourned to provide them with time to locate the tracking number for the registered mail allegedly sent to the landlord.

Rule 7.9 of the Residential Tenancy Rules of Procedure states:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the need for an adjournment arises out of the neglect of the tenants. The tenants did not provide the required proof of service documents which were available prior to this hearing. Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that the Applicant's evidence must be submitted to the Residential Tenancy Branch at least 14 days before the hearing. The tenants did not meet this deadline. The tenants filed this application for dispute resolution on November 9, 2020. I find that the tenants had ample time to upload a copy of the registered mail receipt and failed to do so.

I find that since the claim is monetary in nature and does not involve the ending of a tenancy, dismissing the claim with leave to reapply does not prejudice the tenants who are permitted to file this application in the future. I advised the tenants to provide proof of service at any future hearing. I find that since the tenants are permitted to file this application in the future, the tenants will have a fair opportunity to be heard if they chose to file another application for dispute resolution. Based on my above findings, I decline to adjourn this hearing.

### Conclusion

I dismiss the tenants' application to recover the \$100.00 filing fee without leave to reapply.

The remainder of the tenants' 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: February 09, 2021

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Residential Tenancy Branch