



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants (collectively "tenants") did not attend this hearing, which lasted approximately 13 minutes. The landlord and her agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had permission to represent her at this hearing.

The hearing began at 1:30 p.m. with me and the landlord's agent present. The landlord called in at 1:31 p.m. The hearing ended at 1:43 p.m.

At the outset of the hearing, the landlord's agent confirmed that the landlord settled her application with one tenant, "tenant EJ," originally named in this application. She said that the landlord wanted to remove the name of this tenant-respondent from this application. Pursuant to section 64(3)(c) of the *Act*, I removed tenant EJ as a tenant-respondent from this application, as per the landlord's agent's request.

At the outset of the hearing, the landlord's agent confirmed that she wanted to reduce the landlord's monetary claim from \$13,564.00 to \$5,403.67, since the landlord settled the matter with tenant EJ and received payments for this application.

During this hearing, the landlord and her agent did not make any adjournment or accommodation requests.

Parties are not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

Preliminary Issue – Service of Landlord's Application

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package by way of registered mail to an address obtained from the tenants' tenancy application at the beginning of this tenancy in October 2020.

The landlord stated that the tenants abandoned the rental unit and did not provide a forwarding address when they left. She said that the tenants received this application and she has been in contact with them through emails.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

*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 documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

**Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing** the date of service, the address of service, and that **the address of service was the person's residence at the**

**time of service**, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

I find that the landlord did not serve the tenants with the landlord's application, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12.

I find that the landlord was unable to provide sufficient documentary proof of a current residential or forwarding address given by the tenants. The landlord used addresses provided by the tenants in a tenancy application from October 2020, months before the landlord filed this application on January 6, 2021. The landlord did not provide a copy of this tenancy application to show these residential addresses. The landlord did not provide a copy of any emails showing that the tenants received this application. The landlord had ample time from filing this application on January 6, 2021 to this hearing date of May 11, 2021, to provide this information. The tenants did not provide a current residential or forwarding address to the landlord. The tenants did not attend this hearing to confirm service.

I notified the landlord and her agent that the landlord's application was dismissed with leave to reapply, except for the filing fee. I informed them that the landlord could file a new application and pay a new filing fee, if the landlord wished to pursue this matter further. I repeated my decision a few times during the hearing, as they repeatedly asked why I was dismissing this application and they asked for advice on how to serve the tenants with a future application. I informed them that I could not provide legal advice to them, as they could hire a lawyer to obtain same. They confirmed their understanding of same.

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of 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: May 11, 2021

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Residential Tenancy Branch