



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

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

- a monetary order for unpaid rent or money owed, or compensation for monetary loss, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 1:43 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord was 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only one who had called into this teleconference.

The landlord gave sworn testimony that they had served the tenant in accordance with the subservice order granted on May 3, 2021. Accordingly, I find that the tenant deemed served in accordance with sections 88, 89, and 90 of the *Act*, 5 days after mailing.

### **Preliminary Issue— Limitation Period for Filing of Application for Dispute Resolution**

The landlord testified that the tenant had moved out on December 10, 2018, and the landlord had filed an application on September 7, 2020 for monetary orders related to the tenancy. On December 17, 2020, a hearing was held in relation to that application, and the landlord's application was dismissed with leave to reapply as the Arbitrator found that the tenant was not served in accordance with section 89(1) of the *Act*.

The landlord filed this new application on January 13, 2021, and served the tenant again after obtaining a substituted service order on May 3, 2021. The landlord testified that they were unable to file their application within the time limit as the first hearing was set for December 17, 2020, past the two year time limit. The landlord testified that the delay in filing their applications was due to the fact that they had previously hired a property manager who failed to perform their role properly, and the fact that the landlord was occupied with their pregnancy.

Section 60 of the *Act* reads:

***Latest time application for dispute resolution can be made***

**60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

As the landlord filed this application on January 13, 2021, I find that that this application was not made within the 2 year limitation period as this tenancy ended in December 10, 2018. Although the landlord was given leave to reapply in the previous decision dated December 17, 2020, leave to reapply is not an extension of applicable timelines. As noted in **Residential Tenancy Policy Guideline #36 Extending a Time Period**, an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances.***

Policy Guideline #36 sets out the following criteria for determining whether there are exceptional circumstances:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit reasonable and appropriate steps were taken to comply with the relevant time limit

- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances.

The following reasons do not meet the definition of exceptional circumstances:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

In this case, although the landlord filed their first application on September 7, 2020 within the required time period, the first available hearing date was not available until past the limitation period. The landlord failed to obtain the requested orders at that hearing as they failed to meet the requirements for service under the *Act*. I have considered the landlord's submissions for the delay in filing their first claim. Although I acknowledge the landlord's testimony that they were unable to obtain a hearing date until past the 2 years, which contributed to the late filing of this application, I find that the reasons provided by the landlord for the delay in filing, such as failure of the property manager to perform their role, do not meet the criteria for exceptional circumstances as set out in the policy guideline. I also find that the dismissal of the last application does not automatically qualify as exceptional circumstances as the landlord failed to meet the service requirements under the *Act*.

I find that the landlord failed to file this application within the 2 year period as set out in section 60(2) of the *Act*. Accordingly, landlord's claim ceases to exist, and this application is dismissed in its entirety without 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 18, 2021

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Residential Tenancy Branch