



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH Pool XVI LP and Metcap Living Management Inc and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlords' agent (the "agent") attended the hearing and 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. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The agent testified that tenants are normally served via registered mail; however, there is no registered mail receipt in the landlords' file and that this application for dispute resolution may not have been served on the tenants. The agent testified that the agent of the landlord who filed this application for dispute resolution is no longer with the landlord company.

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]...*

As no proof of service documents were entered into evidence and the agent did not know if the landlords' application for dispute resolution was served on the tenants, I find that the landlord has not proved, on a balance of probabilities, that the tenants were served in accordance with section 89 of the *Act*.

At the hearing, I advised the agent that I was dismissing this application with leave to reapply. I notified the agent that if the landlords wished to pursue this matter further, the landlords would have to file a new application. I cautioned the agent to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

### Conclusion

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

The remainder of the landlords' 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: August 27, 2021.

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Residential Tenancy Branch