



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL and FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:46 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. Landlord AS (the landlord) 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord affirmed he served the notice of hearing and the evidence (the materials) on March 22, 2021 by registered mail sent to the address mentioned on the cover page of this decision. The landlord stated the tenant did not provide his forwarding address. The landlord said his friend told him the tenant's forwarding address.

Section 89 of the Act states:

- (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 Branch Policy Guideline 12 states how the applicant may find the respondent's address for service:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Based on the landlord's testimony, I find the landlords failed to prove that the tenant's forwarding address is the one used by the landlords to serve the materials. I find the landlord did not serve the materials in accordance with section 89 of the Act.

The landlords must bear the cost of the filing fee, as the landlords were not successful.

### Conclusion

I dismiss the landlords' application for a monetary order and for an authorization to retain the security deposit with leave to reapply.

I dismiss the landlords' application for an authorization to recover the filing fee for this application 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: August 17, 2021