



# Dispute Resolution Services

Page: 1

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* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Recovery of the filing fee from the opposing party.

The tenants did not attend the hearing, although I left the telecommunication line open throughout the hearing which commenced at 1:30 p.m. and ended at 1:42 p.m. The landlord was represented at the hearing by an agent, NS ("landlord").

The landlord gave the following testimony. He can't remember when the Notice of Dispute Resolution Proceedings package was served upon the tenants. There have been many dispute resolutions filed against these tenants and he thinks this one was likely served personally. When asked for confirmation of delivery, the landlord stated that he believes this was probably a personal service delivery although it may have been by registered mail. The landlord reviewed his emails to determine the date he likely personally served the Notice of Dispute Resolution Proceedings package and arrived at a date of March 6<sup>th</sup>. That was the last date the landlord ever went to the rental unit address. The landlord does not have records of attending the rental unit subsequent to March 6<sup>th</sup>.

I note that the Notice of Dispute Resolution Proceedings was created and sent to the landlord for delivery to the tenants on March 17, 2021.

### Preliminary Issue - Service

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Section 89 of the Act states:

**Special rules for certain documents**

**89** (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*];
- (f)by any other means of service provided for in the regulations.

Residential Tenancy Branch Policy Guideline PG-12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position. I find that procedural fairness requires that I be satisfied the tenants have been served with the application for dispute resolution.

The landlord has failed to provide documentary evidence or satisfactory testimony to prove to me the Notice of Dispute Resolution Proceedings was served upon the tenants in accordance with section 89 of the Act. In light of this finding, the landlord's Application for Dispute Resolution is dismissed with leave to reapply.

Conclusion

This application is dismissed with leave to reapply.

The application to recover the filing fee is dismissed 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 06, 2021

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Residential Tenancy Branch