



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MNRL, MNDCL, FFL

### Introduction

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

- a monetary order for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The three landlords, the landlords' agent, and the tenant's daughter attended the hearing and were each given a full opportunity to be heard, to make submissions and to call witnesses.

The hearing began at 11:00 a.m. and ended at 11:21 a.m. The tenant's daughter disconnected from the hearing at 11:15 a.m.

At the end of this hearing, I informed the three landlords and their agent that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by anyone. The three landlords and their agent all separately confirmed that they did not record this hearing.

At the outset of this hearing, I explained the hearing process to both parties. Both parties had an opportunity to ask questions. Neither party made any accommodation requests.

### Preliminary Issue - Previous Hearings and Service of Documents

This matter was previously heard by a different Arbitrator on March 18, 2021 and was adjourned because the tenant was sick with covid-19 ("first hearing"). An interim decision was issued on the same date by that Arbitrator.

The second hearing occurred on April 20, 2021 and a decision was issued on May 5, 2021 ("second hearing" and "original decision") by the same Arbitrator as the first hearing. The tenant did not attend the second hearing, only the landlords did. The original decision granted a monetary order of \$4,125.00 to the landlords ("original monetary order").

The tenant applied for a review of the original decision and a third hearing (this current review hearing on September 14, 2021) was granted by a different Arbitrator, pursuant to a "review consideration decision," dated May 7, 2021.

By way of the review consideration decision, the tenant was required to serve the landlords with a copy of the review consideration decision and the notice of review hearing, within three days of receiving the review consideration decision.

The landlords' agent stated that the landlords did not receive a copy of the above documents from the tenant. He said that the landlords received an email reminder from the RTB to attend a hearing. He claimed that after receiving the email reminder, he called the RTB on the morning of this third hearing on September 14, 2021 and obtained a phone number and access code to call into this hearing.

Accordingly, I find that the landlords were not served, as per section 89 of the *Act*, with the review consideration decision or notice of review hearing, as required. The review consideration decision stated clearly that the above documents were required to be served by the review applicant (tenant) to the review respondent (landlords).

### Preliminary Issue – Adjournment Request

The tenant's daughter initially indicated that she did not have permission to represent the tenant, her mother, at this hearing. She said that she was not prepared for this hearing and she did not know what to say. She claimed that she did not know if she had permission to speak on the tenant's behalf. She then stated that she had permission to represent the tenant and she wanted to proceed with the hearing. The

tenant's daughter stated approximately five different times that she did and did not have permission to represent the tenant at this hearing.

The tenant's daughter then claimed that she "googled" information during this hearing and she wanted to seek an adjournment. I asked whether she was acting as the tenant's agent, since she claimed that she did not have permission to do so. She said that she did not know. She explained that she was tired and wanted to go to sleep. She stated that the tenant was in the emergency room of a hospital on the night before this hearing and sick with covid-19. She maintained that the tenant was currently "unconscious" beside her during this hearing. She noted that she could provide the tenant's hospital records later, but she did not know she had to give proof for this hearing. She explained that the tenant was medicated and sleeping, and it was not her or the tenant's fault that the tenant was sick. She confirmed that the tenant asked her to call into this hearing and then the tenant went to sleep. The tenant's daughter maintained that no one else could assist her at this hearing because her father lives in Alberta and was "far away." She claimed that her sister was at school.

The landlords' agent opposed the adjournment request. He maintained that the tenant was delaying this matter, and this was the third hearing for this application, which has been ongoing for a year. He confirmed that the landlords first filed their application in November 2020. He said that the tenant was sick with covid-19 at the first RTB hearing on March 18, 2021. He stated that the first hearing was adjourned by the Arbitrator and the landlords received a copy of that interim decision. He claimed that a second hearing occurred on May 5, 2021, and the tenant did not appear at that hearing but the landlords appeared. He said that the landlords were granted a monetary order of \$4,125.00 and they received that original decision and original monetary order. He confirmed that the tenant filed a review of that decision and this was the third hearing on September 14, 2021. He said that the landlords did not want a further delay in this matter.

At this hearing, I informed both parties that I would not grant an adjournment of the landlords' application. I made this decision after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*

- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I find that a further delay in this matter would prejudice the landlords, who opposed the adjournment request. I find that a second adjournment would not likely lead to a resolution of this matter, which has been ongoing for almost 10 months and has not been resolved to date. This application was already adjourned one time on March 18, 2021, due to the tenant's covid-19 medical condition. I find that the need for a second adjournment is a result of the intentional or negligent actions of the tenant.

This matter was first filed by the landlords on November 26, 2020, almost 10 months prior to this third hearing date of September 14, 2021. The first hearing occurred on March 18, 2021, and the tenant was sick with covid-19 at that time, so the matter was adjourned by that Arbitrator. The second hearing occurred on May 5, 2021, and the tenant did not attend that hearing. The tenant filed a review of the May 5, 2021 decision, stating that she was unable to attend. The tenant was granted a third hearing by way of the review consideration decision, dated May 7, 2021. A new notice of hearing, dated May 19, 2021, was provided to the tenant at that time. Therefore, the tenant had almost 4 months to prepare for this third hearing from May 19, 2021, to September 14, 2021. The tenant was aware of her covid-19 medical condition on March 18, 2021, when the first hearing occurred, almost 6 months prior to this hearing on September 14, 2021. Further, the tenant did not provide medical records to show that she was in the hospital or that she was medically unable to attend this third hearing.

I find that the tenant could have arranged for an agent with authority to speak on her behalf at this third hearing. The tenant asked her daughter to call into this hearing and provided her with the information to do so. The tenant's daughter was given a full opportunity to be heard and to present submissions on the tenant's behalf but chose not to attend this full hearing, after initially stating that she wanted to proceed as the tenant's agent.

After I verbally provided my decision denying the adjournment request, the tenant's daughter stated that she wanted to leave the hearing and no longer participate. I informed her that I would make a decision in her absence. She said that if a decision

was made at this hearing, she did not want to participate and asked if the tenant could “appeal” that decision.

During this hearing, I notified both parties that a party may only apply once for a review consideration, which has already been completed by the tenant.

Section 79(7) of the *Act* states the following:

*(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.*

The tenant’s daughter exited the hearing at 11:15 a.m., after attending for approximately 15 minutes.

### Decision

Section 82(3) of the *Act* states:

*Following the review, the director may confirm, vary or set aside the original decision or order.*

The landlords’ agent confirmed that the landlords were still pursuing their full application and asked that the original decision be confirmed. He stated that the landlords were still in possession of the original decision and original monetary order.

As noted above, I found that the tenant did not serve the landlords, as per section 89 of the *Act*, with the review consideration decision or notice of review hearing, as required. However, the landlords and their agent attended this hearing and were ready to proceed. The tenant did not attend this hearing. The tenant’s daughter chose not to provide submissions on behalf of the tenant, after attending this hearing for 15 minutes.

For the above reasons and based on the landlords’ undisputed application, I confirm the original decision and original monetary order, both dated May 5, 2021. During this hearing, I verbally informed the landlords and their agent of my decision. They confirmed their understanding of same.

Conclusion

The original decision and original monetary order, both dated May 5, 2021, are confirmed.

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: September 16, 2021

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Residential Tenancy Branch