



# 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 unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's 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 agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that he was not recording this dispute resolution hearing.

The agent confirmed his email address for service of this Decision.

Preliminary Issue- Service

The agent testified that the tenant was served with this application for dispute resolution and evidence on August 18, 2021 via registered mail. No registered mail receipt or other documentary proof evidencing the mailing were entered into evidence. In the hearing the agent verbally provided me with the tracking number for the registered mailing which is located on the cover page of this decision. The Canada Post website states that the above mailing was mailed on August 18, 2021 and was available for pick up on August 20, 2021. On August 27, 2021 the Canada Post delivery progress report states that the package would be returned to sender if not picked up in 10 day. No further details are provided on the Canada Post delivery progress report. Delivery was not confirmed.

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.

I find that the agent has not proved, on a balance of probabilities, that the August 18, 2021 registered mail package was sent to an address at which the tenant resides because the customer receipt or other documentary evidence to prove the address the package was sent to were not entered into evidence. The landlord's application is therefore dismissed.

Preliminary Issue- Res Judicata

This application for dispute resolution sought a Monetary Order for June 2021's rent in the amount of \$2,400.00, plus the \$100.00 filing fee for a total claim of \$2,500.00. The agent testified that the above claim was already awarded to the landlord in a previous Direct Request Application. The file number for the previous Direct Request Application is located on the cover page of this Decision.

The previous Decision is a Direct Request Decision dated September 8, 2021 in which the landlord was granted an Order of Possession and a Monetary Order in the amount of \$2,500.00 for June 2021's rent and the \$100.00 application fee for the Direct Request application.

*Res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

I find that the landlord's claim for unpaid rent made in this application for dispute resolution was previously determined in the September 8, 2021 Direct Request Decision. I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. The landlord's application is therefore dismissed without leave to reapply.

I note that the landlord remains at liberty to file a claim for overholding, or other damages associated with this tenancy. The landlord is only barred from seeking June 2021's rent again.

### Conclusion

The landlord's application for a Monetary Order for unpaid rent and recovery of the filing fee are dismissed without leave to reapply.

The landlord's application for authorization to retain the security deposit 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: January 14, 2022

---

Residential Tenancy Branch