



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on February 1, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlords were represented at the hearing by two agents (collectively referred to as the Landlords). The Tenants did not attend the hearing. The Landlords were asked how they served the Tenants with their Notice of Hearing, and evidence. The Landlords stated that they were not given a forwarding address by the Tenants when they moved out last July, so the Landlords sent the Notice of Hearing to an old address they had for the Tenants. More specifically, the Landlords stated that when the Tenants moved in on July 1, 2019, the Tenants provided copies of their Driver's Licences. The Landlord sent the hearing packages to the addresses listed on those licences because they had no other address for the Tenants. The Landlords stated that the packages were sent by registered mail in July 2021, but the packages were returned.

I have considered the evidence and testimony on this matter, and I find the address the Landlord sent the hearing package to were too old to be sufficient for service of the hearing documentation. The addresses were over 2 years old at the time the mail was sent to them. I do not find the Tenants were sufficiently served via registered mail, to

their previous addresses. I find there is insufficient evidence that the Landlord served the Tenants in an acceptable manner for the purposes of this proceeding.

The Landlords stated they applied for an order for substituted service, so that they could serve the Tenants via email. However, on January 27, 2022, this application was denied. Further, the Landlords noted that they did not have an agreement, in writing, with the Tenants to serve documents via email. Although the Landlords attempted to serve the Tenants via email anyways, I find there is insufficient evidence that they would have likely received the email sent to them. I do not find email service in this case is sufficient, particularly given the Landlord's request to serve in this manner was already denied.

In summary, I am not satisfied the Landlords have sufficiently served the Tenants with the Notice of Hearing. As such, I dismiss the Landlord's application, in full, with leave to reapply.

I note the following portion of the Act:

**Landlord may retain deposits if forwarding address not provided**

- 39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
  - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The Landlords explained that the Tenants have not provided their forwarding address in writing, as of the time of this hearing, which is partly why the Landlord was unsuccessful in serving the Tenants sufficiently for this hearing. As stated in the hearing, the Tenants have one year to provide their forwarding address, in writing. Since the Landlords have not yet been provided with a forwarding address from the Tenants, they may retain the deposit for the time being. I reminded the Landlord that if the Tenants provide their forwarding address, in writing, within 1 year after the end of the tenancy, then they will either have to return the deposit, in full, or file another application against the deposit (for damages sought).

**Conclusion**

The Landlord's application is dismissed, in full, with leave to reapply.

This does not extend any statutory deadlines the Landlord must meet.

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: February 01, 2022

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Residential Tenancy Branch