



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEST PROPERTY MANAGEMENT AND REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

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

- a monetary order of \$2,106.91 for damage to the rental unit and for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, totalling \$1,450.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:42 p.m. I monitored the teleconference line throughout this hearing. 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's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed his name and spelling. He said that he was a property manager and the owner of the landlord company ("landlord") named in this application and that he had permission to speak on its behalf. He confirmed the rental unit address. He provided an email address for me to send this decision to the landlord after the hearing.

At the outset of this hearing, I informed the landlord's agent that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord's agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord's agent. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the rental unit address and the legal name of the landlord. The landlord's agent consented to these amendments during this hearing.

#### Preliminary Issue – Service of Landlord's Application

The landlord's agent testified that the tenant was served with a copy of the landlord's application for dispute resolution hearing package, by way of registered mail on September 17, 2021. The landlord provided a Canada Post receipt, and the landlord's agent confirmed the tracking number verbally during this hearing.

The landlord's agent said that he sent the above documents to a forwarding address provided by the tenant verbally, which was recorded in notes on the landlord's property management system, with a date stamp of September 5, 2021. He stated that the address was obtained either on September 4 or 5, 2021. He explained that he had the notes in front of him during this hearing, but he did not provide a copy as evidence to support the landlord's application. He claimed that the tenant did not attend the move-out condition inspection or provide a written forwarding address to the landlord.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

*89 (1) An application for dispute resolution ..., 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 Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

**Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing** the date of service, the address of service, and that **the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

I find that the landlord did not serve the tenant with the landlord's application, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12.

I find that the landlord failed to provide documentary proof of a residential address or a forwarding address provided by the tenant and when that address was given to the landlord. The landlord claimed that he had notes from the property management system, to confirm a verbal conversation where the tenant provided a forwarding address, but he did not provide a copy for this hearing. The landlord had ample time from filing this application on August 31, 2021, to this hearing date of March 15, 2022, a period of over 6.5 months, to provide the above information. The tenant did not attend this hearing to confirm service.

I notified the landlord's agent that the landlord's application was dismissed with leave to reapply, except for the filing fee. I informed him that the landlord could file a new application and pay a new filing fee, if the landlord wants to pursue this matter in the future. He confirmed his understanding of same.

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application 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: March 15, 2022

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Residential Tenancy Branch