



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:41 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. Tenant ND (the tenant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented tenant MD. 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 tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands the party is not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The tenant confirmed receipt of the interim decision dated October 06, 2021 on October 07, 2021. Later the tenant affirmed he only received the interim decision a few days ago. The interim decision states:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the landlord within three (3) days of receiving this decision in accordance with section 89 of the Act.

The Residential Tenancy Branch (RTB) emailed the interim decision and the October 07, 2021 notice of reconvened hearing to the landlord on October 07, 2021.

The tenant did not serve the interim decision and the October 07, 2021 notice of reconvened hearing.

The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

Based on the foregoing, I dismiss the tenants' application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

As the tenants were not successful, the tenants must bear the cost of the filing fee.

#### Conclusion

I dismiss the tenants' application 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: May 03, 2022

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Residential Tenancy Branch