



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### 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 landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain 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 1:46 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agent FM and counsel IA (the landlord), 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand the parties are 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 landlord affirmed the tenancy started on November 18, 2015 and ended on August 31, 2020. The landlord stated the tenant did not provide the forwarding address.

The landlord hired a skip tracer to obtain the tenant's forwarding address, recorded on the cover page of this decision. The landlord testified the skip tracer analyzed credit applications submitted by the tenant and provided the forwarding address. I inquired if

the landlord knows precisely how the skip tracer obtained the tenant's forwarding address. The landlord said he used the skip tracer service before, and the information provided by the skip tracer was accurate.

The landlord submitted the rental application signed by the tenant on November 20, 2015. It indicates the tenant's address is the forwarding address.

The landlord affirmed he did a land title search and confirmed that the property in the forwarding address belongs to the tenant.

The landlord served the notice of hearing and the evidence via registered mail on September 28, 2022 to the tenant's forwarding address.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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];
- (f) by any other means of service provided for in the regulations.

Residential Tenancy Branch Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

**The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.**

[...]

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

(emphasis added)

The landlord did not submit the skip tracer search result, the land title search or any document to prove the tenant's forwarding address. The landlord's testimony about the skip tracer service was vague. Furthermore, the address provided by the landlord as the forwarding address is the address provided by the tenant in the rental application dated November 20, 2015. I find the landlord did not prove he served the materials to the tenant's forwarding address.

Thus, I find the landlord did not serve the tenant in accordance with section 89(1) of the Act.

I find there are no unusual circumstances to adjourn this hearing. The landlord could have submitted documents to prove the forwarding address.

As such, I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

### Conclusion

I dismiss the landlord's 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 13, 2022

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Residential Tenancy Branch