



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- A monetary order pursuant to s. 67 for compensation for loss or other amount owed;
- A monetary order pursuant to s. 67 for unpaid rent; and
- Return of his filing fee pursuant to s. 72.

H.S. appeared as the Landlord. The Tenant did not attend the hearing.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

### Preliminary Issue – Service of the Landlord’s Application

The Landlord advised that he sent his application and evidence to the Tenant via registered mail sent sometime in December 2021. The Landlord did not provide a registered mail receipt nor was he able to confirm when it had been sent.

Rule 3.5 of the Rules of Procedure requires an applicant to be prepared to demonstrate service of their application materials at the hearing. Amongst the methods of service set out under s. 89(1) of the *Act*, s. 89(1)(c) permits service via registered mail to an address at which a person resides and s. 89(1)(d) permits service via registered mail to a forwarding address provided by the tenant.

The Landlord confirmed that the tenancy ended on November 30, 2020. The Landlord testified that the Tenant did not provide a forwarding address to the Landlord at the end of the tenancy. The Landlord further testified that he obtained the mailing address where the registered mail was sent from the website for a company said to be owned by the Tenant.

I raised my concerns with the Landlord with respect to service of the application materials to an address obtained from a 3<sup>rd</sup> party website. I cannot confirm the accuracy of the information contained on the website. It should be noted that the Landlord is not in a position to testify to the accuracy of the address information contained on the website either. The Landlord did not apply for an order for substitutional service prior to the hearing.

In the face of this uncertainty, I cannot find that the Landlord served the Tenant with his application and evidence. I appreciate the challenges faced by the Landlord when the Tenant did not provide his forwarding address. However, it is the responsibility of the Landlord as the applicant to take the steps necessary to ensure the respondent Tenant was served with notice of his application. I cannot confirm that he has done so under the circumstances.

Policy Guideline #12 provides guidance with respect to the service provisions of the *Act* and specifies that where a party has not been served, the matter may be adjourned or dismissed with or without leave to reapply.

Adjourning the matter would not be appropriate as there is no basis to believe that the Landlord would be better placed to demonstrate service at the reconvened hearing. The Landlord filed his application in December 2021 and has had ample time to prove the Tenant's address for service or seek a substitutional service order. Despite that time, he has failed to do so.

As the Landlord has not demonstrated service, I find that the appropriate course is to dismiss the Landlord's application with leave to reapply. To be clear, the Landlord's claims under s. 67 are dismissed with leave to reapply. I find that the Landlord should bear the cost of failing to serve his application materials on the Tenant prior to the hearing. The Landlord's claim under s. 72 for the return of his filing fee is dismissed without leave to reapply.

No findings of fact or law are made. This dismissal does not extend any time limitation that may apply under the *Act*.

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: July 11, 2022

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Residential Tenancy Branch