



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PAN PACIFIC ALLIANCE CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDCL-S, MNRL-S, MNDL-S, FFL**

### **Introduction**

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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by its agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served each of the tenants with the notice of hearing and all evidence by emails sent on January 29, 2022. The landlord did not provide copies of the sent emails nor any signed Proof of Service form.

### **Issue(s) to be Decided**

Is the landlord entitled to the relief sought?

### Background and Evidence

The landlord gave undisputed evidence regarding the following facts. The monthly rent for this tenancy was \$1,800.00 payable on the first of each month. A security deposit of \$900.00 was collected at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy. The tenants vacated the rental unit on or about January 3, 2022 and have not provided a forwarding address in writing as at the date of the hearing.

The landlord seeks a monetary award of \$5,087.00 comprised of damage to the rental unit, unpaid rent and utilities.

### Analysis

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*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 document]...*
- (f) by any other means of service provided for in the regulations.*

Regulation 43(2) provides that:

- (2) For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.*

Residential Tenancy Policy Guideline 12 further provides that:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package...

An application for dispute resolution must be served on the other party. Emailing a party may be an acceptable manner of service if the email address used was an address provided by the tenants as their address for service. However, in the matter before me I find insufficient evidence that the landlord served the tenants by email, what email address was used and that the email address was one which was provided by the tenants as an address for service. I find the testimony of the landlord without any documentary evidence in support to be insufficient to demonstrate, on a balance of probabilities, that service has been performed. In the absence of documentary evidence such as a signed Proof of Service Form, correspondence from the tenants confirming receipt, or a copy of the email sent showing the email address used and earlier correspondence demonstrating that the address was provided as an address for service, I am unable to conclude that the tenants were served in a manner consistent with the *Act*, or at all.

Based on the paucity of evidence I am not satisfied that the tenant was properly served with the application for dispute resolution. Consequently, I dismiss the present application with leave to reapply.

I note parenthetically that the evidence of the landlord is that the tenants have not provided a forwarding address in writing and that there was no condition inspection report prepared for this tenancy. I find it appropriate to note two sections of the *Act* which may have relevance to the matter at hand.

Pursuant to section 24(2) of the *Act*, a landlord's right to claim against a security deposit is extinguished if they do not comply with the *Act* and regulations and prepare a condition inspection report at the start of the tenancy.

Section 39 provides that, despite any other provision of the *Act*, a landlord may keep the security deposit for a tenancy if a tenant does not provide a forwarding address in writing within one year after the end of the tenancy.

Conclusion

The landlord's application is dismissed in its entirety 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: August 25, 2022

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Residential Tenancy Branch