



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

This hearing dealt with the landlords' application, filed on December 21, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 14 minutes. The two landlords, landlord DG ("landlord") and "landlord LN," attended the hearing and were each 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 1:44 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 two landlords and I were the only people who called into this teleconference.

The two landlords confirmed their names and spelling. The landlord provided her email address for me to send this decision to the landlords after the hearing and landlord LN consented to same. The landlord identified herself as the primary speaker on behalf of the landlords at this hearing and landlord LN consented to same.

Both landlords confirmed that they co-own the rental unit together. Landlord LN provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the two landlords both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the two landlords. I informed them that I could not provide legal advice to them or make decisions on their behalf. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

#### Preliminary Issue – Service of Landlords’ Application

The landlord testified regarding the following facts. The tenant was served with the landlords’ application for dispute resolution hearing package on January 19, 2022, by way of email, as per a substituted service decision, dated January 13, 2022, made by an Adjudicator (“SS decision”). The landlords’ application, notice of hearing, and first evidence package were sent to the tenant in the same email on the above date. The landlords did not serve a copy of the SS decision to the tenant because they did not know that it was required. The tenant was served with the landlords’ second evidence package on July 28, 2022, which the landlords are aware is late service, and the landlords did not provide a copy of this email. The landlords provided an updated monetary order worksheet in the second evidence package, increasing their damages claim from \$218.99 to \$614.22, without filing an amendment form with the RTB. The landlord can provide the required evidence after this hearing.

Section 89(1) of the *Act* states the following (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];*
- (f) by any other means of service provided for in the regulations.***

Section 43(2) of the *Regulation* states the following (my emphasis added):

*(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.***

At page 3 of the SS decision, the Adjudicator stated (emphasis in original):

*I order the landlord to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.*

...

*The landlord is granted an order for substituted service. The landlord may serve the tenant the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, **along with a copy of this substituted service decision,** to the tenant's e-mail address as set out above.*

During this hearing, I read aloud the above second paragraph on page 3 of the SS decision, since the landlord said that she did not have a copy in front of her.

The landlords' first service email, dated January 19, 2022, to the tenant, does not include a copy of the SS decision that the landlords were required to serve to the tenant, showing that the landlords were permitted to serve the tenant by email. The landlord testified that the SS decision was not served to the tenant by the landlords.

I informed the landlords that their second evidence package, which includes documents regarding rent, damages, and an updated monetary order worksheet, would be deemed received late by the tenant, less than 14 days prior to this hearing, contrary to Rule 3.14 of the *RTB Rules*. I informed them that if their email was sent to the tenant on July 28, 2022, it would be deemed received three days later on July 31, 2022, and this hearing occurred on August 9, 2022. I notified them that they did not provide a copy of the above second email as proof of service for this hearing, so I could not confirm that the tenant received the second evidence package. I informed them that they did not file an amendment to increase their monetary claim, which was required, and could not be done by way of an updated monetary order worksheet. I notified them that I could not

consider the second evidence package at the hearing or in my decision for the above reasons.

I informed the landlords that they had ample time to provide the above evidence for this hearing, considering that this application was filed on December 21, 2021, and this hearing occurred on August 9, 2022, over 7.5 months later. I notified them that I could not accept late evidence from the landlords after the hearing, as the tenant would not have notice and could not respond after the hearing. The tenant did not appear at this hearing to confirm receipt of the above documents. I informed the landlords that the tenant did not submit any documentary evidence to the online RTB website for this application and hearing.

Accordingly, I find that the landlords failed to prove service in accordance with sections 59 and 89 of the *Act*, Rule 3.1 of the *RTB Rules*, section 43 of the *Regulation*, and the SS decision. I find that the tenant was not served with the landlord's SS decision and second evidence package, as required.

During this hearing, I informed the landlords that their application was dismissed with leave to reapply, except for the \$100.00 filing fee. I notified them that they could file a new application, if they want to pursue this matter in the future. They confirmed their understanding of same.

The landlords are cautioned about limitation dates, as per section 60 of the *Act*. The landlords are cautioned about using the same SS decision to email future application documents to the tenant, given that the SS decision was made on January 13, 2022, and it may not be relevant to a future application.

### Conclusion

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

The remainder of the landlords' 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: August 09, 2022

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Residential Tenancy Branch