



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

File #310077267: OPR-DR, MNR-DR, FFL  
File #310076252: CNR-MT, RP, AS  
File #310077693: OPR, OPC, MNRL-S, MNDCL-S, FFL

### Introduction

The Landlords file two applications, seeking the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy;
- an order of possession pursuant to s. 55 after issuing a One-Month Notice to End Tenancy;
- a monetary order pursuant to s. 67 for unpaid rent;
- a monetary order pursuant to s. 67 for compensation for loss or other money owed; and
- return of their filing fees for both application pursuant to s. 72.

The Landlords second application advances the monetary claims by claiming against the security deposit.

The Tenant files their own application, seeking the following relief under the *Act*:

- an order pursuant to s. 46 and 66 for more time to dispute a 10-Day Notice to End Tenancy;
- an order for repairs pursuant to s. 32; and
- an order pursuant to s. 65 that the rental unit be assigned.

L.N. appeared as the Landlord and was assisted by N.L.. The Tenant did not attend, nor did someone attend on the Tenant’s behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded after 13 minutes without the Tenant's participation.

The parties 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, the Landlords' assistant confirmed that the Notice of Dispute Resolution for both the Landlords' applications were served on the Tenant via registered mail sent to the rental unit on July 14, 2022 and July 22, 2022. I was advised by the Landlords' assistant that neither registered mail package was retrieved by the Tenant.

I enquired whether the Tenant continued to reside within the rental unit. I was advised by the assistant that the Tenant had moved out, though the Landlords were uncertain when he did so. The Landlords' assistant confirmed the Landlords took back possession of the rental unit on July 13, 2022. The Landlords' assistant advised that the Tenant did not provide a forwarding address when he vacated.

Rule 3.1 of the Rules of Procedure requires applicants to serve their application materials on the named respondents. The methods of service for applications before the Residential Tenancy Branch is set out under s. 89 of the *Act*, which permits service via registered mail sent to an address in which the individual resides. Here, the Landlords' assistant confirmed that the registered mail was sent to the rental unit after the Landlords had taken back possession on July 13, 2022.

I find that the Landlords have failed to demonstrate service of their applications. Policy Guideline #12, which provides guidance with respect to service, indicates that when a party has not been served the matter may proceed, be adjourned, or be dismissed with or without leave to reapply.

I find that to proceed would be procedurally unfair to the Tenant, who did not have notice of the Landlords applications. I did not believe it appropriate to proceed on the Tenant's application, particularly for unpaid rent under s. 55(1.1) of the *Act*, as the issues in dispute are moot as the Landlords took back the rental unit on July 13, 2022,

which is the date I find the tenancy ended. The 10-Day Notice to End Tenancy is no longer in dispute.

I do not believe adjourning this matter is appropriate either. The Tenant was not served, no forwarding address was provided, and the Landlords' assistant indicated that the Landlords have no means of ascertaining the Tenant's whereabouts. There is no reason to believe that adjourning this matter would permit the Landlords the opportunity to serve their materials. Further, as no forwarding address was provided, there is no prejudice to the Landlords as the 15-day window imposed by s. 38(1) of the *Act* has not been triggered.

The appropriate course is to dismiss the applications before me. I dismiss the Tenant's application in its entirety without leave to reapply as the issues in dispute are moot. The tenancy is over. I further dismiss without leave to reapply the Landlords claims for an order of possession as they already have possession of the rental unit. With respect to the Landlords claims under s. 67 of the *Act* for monetary compensation, I dismiss these with leave to reapply.

Finally, I find that the Landlords are not entitled to the return of their filing fees as their applications were not served. Their claims under s. 72 of the *Act* are dismissed without leave to reapply.

No findings of fact or law are made with respect to the substantive issues in dispute other than the tenancy came to an end on July 13, 2022. 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: November 17, 2022

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Residential Tenancy Branch