



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

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

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

C.F. appeared as agent for the Landlord. None of the named respondents attended the hearing.

The Landlord’s agent 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.

### Preliminary Issue – Service of the Application Materials

At the outset of the hearing, I enquired whether the respondents had been served with the Landlord’s application materials. The agent advised that the Notice of Dispute Resolution was served on via registered mail sent on May 12, 2022 and the evidence served via registered mail sent on December 7, 2022. I was provided with tracking receipts for the individual packages.

I was advised by the agent that K.S. was the Tenant and lived within the rental unit while D.T. and J.T. are his parents and were his co-signors. Review of the tracking information shows that both D.T. and J.T. received and signed for the registered mail packages sent on May 12, 2022, though the one sent to K.S., which was mailed to the same address as his parents, was not received. I enquired whether K.S. provided a forwarding address at the end of the tenancy. The agent advised that he had not. The agent further advised through the course of the hearing that she had spoken with the Tenant's mother who had advised that she was uncertain on K.S.'s whereabouts. I was further advised by the agent that the Tenant's phone number has been disconnected.

I took the Landlord's submissions at the hearing, though indicated to its agent that I had concerns with respect to service and would provide relevant findings on the issue given the challenges currently faced here.

Policy Guideline #12 provides guidance with respect to the service provisions of the *Act* and states the following:

The purpose of serving documents under the Legislation is to notify the parties named in the dispute of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding, or a review. Another purpose of providing the documents is to allow the other party to prepare their response for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

Important: all parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the hearing being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. Failure to serve evidence properly may result in that evidence not being considered and the hearing continuing as scheduled, or the hearing being adjourned. See "Parties not served" in section 15 below.

K.S. is the primary respondent. He lived in the rental unit. Ultimately, he must be served. As per s. 89(1) of the *Act*, documents served via registered mail must be sent to the address in which the individual resides. There is no reason to believe that K.S. resides at his parents. Indeed, I am told that his mother does not know of his whereabouts, which would confirm he does not live with her. In this instance, I cannot

make a finding that all the named respondents were properly served with the Landlord's application materials.

I appreciate that the Landlord is faced with a challenge in serving the Tenant, particularly since no forwarding address was provided. However, the Landlord has an obligation to serve the application on each of the respondents. This is a cornerstone requirement to ensuring a procedurally fair process. If the Landlord has no other means of serving K.S., the Landlord could have applied for an order for substitutional service. That was not done here.

I cannot find that each of the named respondents were served with the Landlord's application. Accordingly, I find that it would be procedurally unfair to proceed on the application as the Tenant was not given proper notice. I do not find it appropriate to adjourn the application either as the Landlord has had many months to effectuate service but has failed to do so, instead sending packages to an address which it knows the Tenant does not reside.

I find that the appropriate course is for the Landlord's monetary claims be dismissed with leave to reapply. I note that no forwarding address has been given, such that the 15-day window pertaining to the security deposit imposed by s. 38(1) of the *Act* has not been triggered. There is prejudice in the delay to be sure, though there is no prejudice by dismissing the application in having the application of s. 38(6) should the matter be dismissed.

Dismissal with leave to reapply does not extend to the Landlord's claim for the return of its filing fee, which is dismissed without leave to reapply. The Landlord shall bear the cost of failing to ensure it properly served its application on each of the named respondents.

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: January 10, 2023

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Residential Tenancy Branch