



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEWTON KINSMEN HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

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

- a monetary order of \$1,452.00 for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$600.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 14 minutes. The landlord's agent attended this hearing and was 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 landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name and spelling. She provided her email address for me to send this decision to the landlord after the hearing.

The landlord's agent confirmed that she was the administrator and manager for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She provided the legal name of the landlord. She said that the

landlord owns the rental units. She provided two different rental unit addresses, as noted on this application, stating that the tenant was living in one unit as per the tenancy agreement, and the tenant moved to another unit later, on a temporary basis.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord’s agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord’s agent. I informed her that I could not provide legal advice to her. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

At the outset of this hearing, the landlord’s agent asked that the landlord’s application be dismissed. I informed her that if I dismissed the landlord’s application, the landlord would not have leave to reapply in the future for the same claims. She then claimed that she wanted to proceed with this hearing because it was a “learning experience” for her. I informed her that she would be required to provide evidence regarding service of documents and evidence regarding this tenancy and application, and she affirmed that she was prepared to do so.

The landlord’s agent stated that a previous RTB hearing occurred on May 24, 2022, after which a decision of the same date was issued by a different Arbitrator. She verbally provided the file number for that decision, which appears on the cover page of this decision. She said that she did not provide a copy of that decision as evidence for this hearing. She explained that the Arbitrator dismissed the tenant’s application, except for recovery of the tenant’s security deposit, in that decision. I was required to look up that decision in the online RTB dispute access site and confirmed the above information provided by her.

The landlord’s agent stated that the landlord operates subsidized housing at the residential property, but it is not a housing cooperative. Therefore, I find that I have jurisdiction to deal with this application, as it is not excluded by section 4(a) of the *Act*.

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

The landlord’s agent stated that the tenant was served with a copy of the landlord’s application for dispute resolution hearing package on June 8, 2022, by way of registered mail. She provided a Canada Post tracking number verbally during the hearing. She

said that the mail was delivered on June 15, 2022, but there was no signature viewable on the Canada Post website.

The landlord's agent stated that she obtained a forwarding address from the tenant on May 10, 2022, when the tenant slipped a piece of paper through her door. The landlord's agent agreed that she did not provide a copy of the paper with the forwarding address, as evidence for this hearing. She said that the tenant left the rental unit, without notice, prior to the previous RTB hearing on May 24, 2022.

The landlord was provided with an application package from the RTB, including instructions regarding the hearing process. The landlord was provided with a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

***The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.***

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

Section 89(1) of the Act outlines the methods of service for an application for dispute resolution, which reads in part as follows (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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service **as well as a copy of the printed tracking report.***

Accordingly, I find that the tenant was not served with the landlord's application, as per section 89 of the Act.

I find that the landlord was unable to provide sufficient documentary evidence of a residential or a forwarding address provided by the tenant, as required by section 89(1)(d) of the Act.

The landlord did not provide a copy of the piece of paper as evidence for this hearing, that the landlord's agent said contained the forwarding address that the tenant provided to her. The landlord did not provide a Canada Post receipt or tracking report with this application, as required by Residential Tenancy Policy Guideline 12. The tenant did not attend this hearing to confirm service of the landlord's application.

I notified the landlord's agent that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee. She affirmed her understanding of same.

Conclusion

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

The remainder of the landlord's 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: February 07, 2023

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Residential Tenancy Branch