



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding IMH POOL XIV LP C/O METCAP LIVING MANAGEMENT  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

The Landlord applied for dispute resolution (“Application”) and seeks an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking to recover unpaid rent and the cost of the filing fee under section 72 of the Act.

L.M., Agent, attended the hearing for the Landlord. L.M. affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 9:43 A.M. to enable the Tenants to connect with this teleconference hearing scheduled for 9:30 A.M., the Tenants did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only parties who had called into this teleconference.

The Notice of Dispute Resolution Package (“Materials”) were made available to the Landlord on March 8, 2023. L.M. testified they served the Materials on the Tenants separately by registered mail on March 14, 2023.

Rule 3.1 of the *Rules of Procedure* states that the applicant must serve the Notice of Dispute Resolution Proceeding, the Respondent Instructions for Dispute Resolution, fact sheets provided by the Residential Tenancy Branch and any evidence submitted by

the applicant with the application to the respondent within three days of them being made available to the applicant.

L.M. confirmed the Materials were served on the Tenants six days after they were made available to the Landlord. The Materials would have been deemed received by the Tenants on March 19, 2023 in accordance with section 90(a) of the Act, which is 11 days before the hearing took place.

L.M. stated they were not aware of the requirement to serve the Materials within three days of them being made available and as they worked mostly from home, they had waited until they were next in their office to begin the service process. L.M. confirmed there had been no acknowledgement of receipt of the Materials from the Tenants but they had not been returned as undelivered.

Residential Tenancy Branch Policy Guideline 12 confirms that the decision whether to make an order that a document has been sufficiently served in accordance with the Legislation is for the arbitrator to make on the basis of all the evidence before them.

Based on the Landlord's evidence and testimony, I am not satisfied that the Materials were served on the Tenants in accordance with the deadlines set out in the *Rules of Procedure*.

Therefore, I dismiss the Landlord's Application with leave to re-apply.

### Conclusion

The 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 Act.

Dated: March 31, 2023

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Residential Tenancy Branch