



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### Introduction

This hearing was scheduled to deal with a landlord's monetary claim against two named co-tenants.

The landlord's representative appeared at the hearing. There was no appearance on part of the tenants.

The landlord's agent testified that the proceeding package was emailed to the tenant referred to by initials "SF" on March 2, 2023, as authorized in a Substituted Service Order. The other tenant was not served because the landlord does not have a forwarding address for the other tenant and a Substituted Service Order was not granted for the other tenant.

The landlord's representative testified that the landlord's evidence package and detailed breakdown of the monetary claim were emailed to tenant SF on May 24, 2023 and May 25, 2023.

Section 59(2) of the Act sets out requirements for filing an Application for Dispute Resolution, including:

- (2)An application for dispute resolution must
  - (b)include full particulars of the dispute that is to be the subject of the dispute resolution proceedings

Rules 2.5 and 3.1 of the Rules of Procedure set out what must be included in submitting an Application for Dispute Resolution to the Residential Tenancy Branch and serving it to the respondent within three days of filing. The Rules require that an applicant provide, in part:

## **2.5 Documents that must be submitted with an Application for Dispute Resolution**

To the extent possible, the applicant must submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, when the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

It is clear from section 59(2)(b) of the Act and Rules 2.5 and 3.1 that the applicant is required to serve the respondent with full particulars of the matter that is the subject of the dispute resolution hearing, including a detailed calculation where a monetary claim is being made, with the application. If it is not possible to provide a detailed calculation or the amount claimed changes, the Rule 4.1 of the Rules of Procedure provide a mechanism to amend the application up to 14 clear days to serve evidence. If evidence is not available at the time of filing, the Rule 3.14 of the Rules of Procedure provide that the applicant may serve evidence, as soon as possible, but no later than 14 clear days before the hearing.

In addition to the service deadline of 14 clear days before the hearing, one must consider the method of service in calculating the last day to day to serve. In serving a party by email, section 90 of the Act deems a person to be in receipt of the documents 3 days after the email is sent.

The above requirements are in keeping with the principles of natural justice and fairness.

In this case, with a hearing date of June 6, 2023, the respondent was entitled to receive the Amendment, detailed monetary calculation, and evidence no later than May 22, 2023. In using email as the method of service, the landlord was required to send the email three days prior, on May 19, 2023 to be considered on time and afford the tenant sufficient time to review and prepare a response.

In sending the detailed calculation and evidence on May 24, 2023 and May 25, 2023, I find the landlord was late and failed to serve the tenant in accordance with section 59(2) of the Act and Rules of Procedure.

I informed the landlord's representative of the above and the landlord was given the option to proceed, but that I would not consider the landlord's documents, or I would dismiss the application with leave to reapply since the tenants did not appear for the hearing and would not be prejudiced by dismissal with leave.

The landlord's representative indicated it would be their preference to have the application dismissed, with leave to reapply.

Having heard the tenants have not provided the landlord with a forwarding address, in writing, I do not order return of the security deposit. Rather, the landlord remains entitled to continue to hold the security deposit in trust, to be administered at a later date in accordance with sections 38 and 39 of the Act.

### Conclusion

The landlord's application is dismissed with leave to reapply.

The security deposit remains in trust, to be administered at a later date in accordance with section 38 and 39 of 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: June 07, 2023

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Residential Tenancy Branch