



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **MNSDB-DR FFT**

### Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenants applied for:

- an order to seek the return of all the Tenants' security and pet damage deposits pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

One of the two Tenants (JD) attended the hearing. The Landlord did not attend the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (RoP). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated December 20, 2022 (Interim Decision), the presiding adjudicator (Adjudicator) determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Tenants. As a result, this hearing was scheduled and came on for hearing on July 25, 2023, to consider the Application. Notices of the reconvened hearing, and a copy of the Interim Decision, were served on the parties by the Residential Tenancy Branch (RTB), in accordance with section 89 of the Act.

The Tenants submitted a signed Proof of Service of Tenant's Notice of Direct Request Proceeding that declares the Landlord was served with the Notice of Dispute Resolution Proceeding – Direct Request (Proceeding Package) by registered mail. The Tenants

provided a copy of the Canada Post confirmation of delivery which was signed by the Landlord to confirm the Landlord received the Proceeding Package.

Based on the written submissions of the Tenants and in accordance with section 89 of the Act, the Adjudicator found that the Landlord was served with the Proceeding Package on November 5, 2022, by registered mail, and received the Proceeding Package on November 10, 2022.

#### Preliminary Matter – Removal of Applicants from Application

At the outset of the hearing, I noted that there were two applicants (AH and JS) who were not named as on the tenancy agreement as tenants. JD stated AH and JS were roommates and were not tenants on the tenancy agreement and that the tenancy agreement had not been amended to add them as tenants to the tenancy agreement. JD then requested that AH and JS as applicants to the application.

Rule 4.2 of the RoP states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As neither AH or JS are named as tenants in the tenancy agreement, the Landlord could reasonably have anticipated that the Tenants would request the Application be amended to remove AH and JS as applicants. As such, I order the Application be amended to remove AH and JS as applicants in the Application.

#### Preliminary Matter – Withdrawal of Application

As noted by the Adjudicator, the Tenants must prove that they served the Landlord with their forwarding address in a manner that is considered necessary as per sections 71(2)1) and 88 of the Act. Policy Guideline #49 provides that proof of service of the forwarding address may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the Landlord, stating they took hand delivery of the document(s) or
- **a witness statement that they saw the tenant deliver the document(s).**

In the Interim Decision, the Adjudicator noted that, on the second page of the Proof of Service of the Forwarding Address form, there is no signature of a witness to confirm service of the forwarding address on the Landlord. At the reconvened hearing, JD stated she placed the Tenants' Address Form on the Landlord's door but there was no witness present with her at the time she placed it on the door. As such, the Tenants did not comply with the requirement that they provide a witness statement to verify service of the Tenants' Address Form on the Landlord.

JD requested that the Application be withdrawn with liberty to reapply. As the Landlord did not attend the reconvened hearing, I grant the JD's request for withdrawal of the Application with leave to reapply. The issuance of this decision does not extend any applicable deadlines under the Act.

### 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 *Residential Tenancy Act*.

Dated: August 20, 2023

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Residential Tenancy Branch