



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlords' application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard.

At the commencement of the hearing I heard that the landlords gave the Landlord's Application for Dispute Resolution to the tenant's employee but not the tenant. I determined that this manner of service does not comply with section 89 of the Act. With respect to monetary claims, section 89(1) of the Act requires that an applicant serve the respondent 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*].

The tenant requested this application be dismissed. The respondent requested the application be adjourned.

The tenant submitted that she believed the dispute had been resolved since she had received a refund of her security deposit in January 2011. However, she was then served with a voluminous submission one week before the date of this hearing and

another submission was served upon her the day before this hearing. The landlord explained that the most recent submission was merely a rebuttal to the tenant's response received in the days prior.

Dispute resolution proceedings are to comply with the Rules of Procedure. Rule 3.1 of the Rules of Procedure provides that the applicant must provide details of a monetary claim and available evidence at the time of serving the Application for Dispute Resolution. Evidence not available at the time of filing the application may be served on a later date that complies with Rule 3.5. I noted that much of the evidence provided by the landlords would have been available at the time of filing the application.

I also noted that the amount of compensation sought on the Application for Dispute Resolution differed than the amount requested by the landlords in the evidence package yet the landlords had not amended their application. An application that has been served may be amended at least seven (7) days before the hearing in accordance with Rule 2.5.

In light of the above considerations, I dismissed the landlords' application with liberty to reapply. The parties are strongly encouraged to familiarize themselves with the requirements of the Act and the Rules of Procedure if they chose to make a subsequent Application for Dispute Resolution.

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: April 01, 2011.

Residential Tenancy Branch