

DECISION

Dispute Codes MNDC

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary compensation for damage or loss under the Act, regulation, or tenancy agreement.

Both parties were in attendance at the hearing. The Landlord confirmed that they received Notice of Hearing and Application for Dispute Resolution. The Tenant and the Landlord failed to provide their evidence in advance of the hearing, however, both parties stated that they have documentary evidence in their possession relevant to the issues. The parties are in disagreement over whether or not the Tenant has overpaid monies to the Landlord.

The hearing package of documents provided to the applicant contains instructions on evidence and the deadlines to submit evidence to each party, as does the Notice of Hearing. The Landlord confirmed that he received a copy of the Notice of Hearing and Application.

For the parties' reference, the Residential Tenancy Branch Rules of Procedures state the following with regards to evidence:

3.4 Evidence to be filed with the Application for Dispute Resolution

To the extent possible, the applicant must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

3.5 Evidence not filed with the Application for Dispute Resolution

- a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.
- b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.
- c) If copies of the applicant's evidence are not received by the Residential

Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

4.1 Serving the respondent's evidence

- a) If the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.
- b) If the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.
- c) If copies of the respondent's evidence are not received by the Residential Tenancy Branch or served on the applicant as required, the Dispute Resolution Office must apply Rule 11.6 to evidence the respondent presents at the dispute resolution proceeding [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

While the responsibility of proving a claim is on the person (applicant) making the claim, the respondent is also responsible for submitting their documents in advance of the hearing if they dispute the Application. Both parties stated that they have documentary evidence in their possession relevant to the issues in dispute. I find that the Tenant has failed to provide evidence to prove her claim. I also find that the Landlord has failed to provide their evidence to dispute the claim in advance of the hearing.

As a result, I dismiss the claim 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: December 05, 2011.

Residential Tenancy Branch