



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MND, MNDC, FF

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking a monetary for damage to the unit, site or property, compensation for damage or loss under the Act, regulation, or tenancy agreement, recovery of the filing fee, and an order to keep the security deposit.

Both parties were in attendance at the hearing and provided affirmed testimony. The Landlord testified that they sent the Application and Notice of Hearing package to the Tenant by registered mail on December 12, 2011. The Tenant testified that she received Notice of Hearing and Application for Dispute Resolution. The Tenant stated that she provided her work address to the Landlord, which is a PO Box for service of documents by the Landlord. The Tenant declined to provide any other address to our office or to the Landlord.

The Landlord testified that they delivered an evidence submission to our office on February 08, 2012 and sent this to the Tenant by registered mail on the same date. The Tenant testified that she did not receive this yet as she had been away and had not checked for the mail. The Landlord testified that their initial Application initial claim was based on estimated future costs, and that their evidence submission of February 08, 2012 states their claim for actual costs with the receipts provided for the repairs done.

I find that the documents the Landlord submitted, on February 08, 2012, which the Landlord refers to as evidence, are actually a significant amendment to their claim increasing the claim to over \$5,000.00. The Landlord's testimony confirmed that she neglected to fill out a new Application form or pay an increased filing fee, as required when a claim is amended or exceeds \$5,000.00.

Section 59 of the Residential Tenancy Act (the "Act"), provides specific rules for the Application for dispute resolution. Section 59 of the Act states:

**59 (1) [Repealed 2006-35-83.]**

(2) An application for dispute resolution must

(a) be in the applicable approved form,

(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and

(c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the

other party within 3 days of making it, or within a different period specified by the director.

- (4) The director may waive or reduce the fee if satisfied that
  - (a) the applicant cannot reasonably afford to pay the fee, or
  - (b) the circumstances do not warrant the fee being collected.
- (5) The director may refuse to accept an application for dispute resolution if
  - (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,
  - (b) the applicant owes outstanding fees under this Act to the government, or
  - (c) the application does not comply with subsection (2).
- (6) An individual occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that this Act applies to that living accommodation.

Section 8 of the Residential Tenancy Regulation (the "Regulation") requires that a filing fee of \$100.00 be paid for Applications where the claim exceeds \$5,000.00.

The Residential Tenancy Branch Rules of Procedure ("Rules of Procedure") section 2.5 states the following:

**2.5 Amending an application before the dispute resolution proceeding**

The applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application.

If the application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.

I find that the Landlord failed to file an amended/revised application in accordance with section 59 of the Act and 2.5 of the Rules of Procedure; and pay the filing fee for the amendment/revision of the application in accordance with the Act and section 8 of the Regulation. The Landlord's initial Application of December 12, 2011 stated that \$4,843.47 was being claimed. The Landlord's initial claim was based on estimated future costs, and I find the claim on December 12, 2011 was premature. On February 08, 2012 the Landlord's submission indicating that they were increasing their claim to \$7,911.54, based on actual costs and receipts for repairs done.

The Landlord paid only an initial \$50.00 filing fee for their Application on December 12, 2011. As the Landlord's evidence of February 08, 2012 is an attempt to amend/revise

their claim in excess of \$5,000.00, I find that the Landlord failed to pay a \$100.00 filing fee as required by the Act and Regulation. I also find that the Landlord failed to properly identify the Tenant's mailing address for our office on the Application form as the address on the form does not indicate that the Tenant's mailing address is a PO Box.

The Landlord's 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: February 22, 2012.

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Residential Tenancy Branch