



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking monetary compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation, or tenancy agreement and recovery of the filing fee.

Both parties were in attendance at the hearing. The Landlord confirmed that they received Notice of Hearing and Application for Dispute Resolution but that they did not receive any of the Tenants' evidence. The Landlord stated that they felt unable to respond to the Tenants' claim without having a complete copy of their evidence. The Tenants confirmed that their evidence had only been submitted to our office with their Application and not to the Landlord. The Tenants indicated that they understand that the Landlord is entitled to a copy of their documents, but explained that they had not yet sent them the evidence. The Tenants indicated that they would be willing to reapply for dispute resolution at a later date and submit their evidence to the Landlord at that time.

The parties are in disagreement over whether or not the Landlord owes the Tenants compensation for damages and losses under the Act, regulation or tenancy agreement.

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 they only received a copy of the Notice of Hearing and Application and not the Tenants' evidence.

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

3.1 Documents that must be served

Together with a copy of the Application for Dispute Resolution, the applicant must serve each respondent with copies of all of the following:

- a) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- b) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- c) the details of any monetary claim being made, and
- d) any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

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 would like to make submissions of evidence relevant to the issues in dispute. I find that the Tenants have failed to provide evidence to the Landlord as required. I also find that the Landlord has failed to provide their evidence to dispute the claim of the Tenants.

As a result, I dismiss the Tenants Application 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: March 16, 2012.

Residential Tenancy Branch