



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF, O

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. One of the tenants has applied for a monetary order for return of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application. The details section of the tenant's application states the landlord breached the tenants' right to quiet enjoyment and the tenant seeks a monetary order in the amount of \$4,000.00.

The hearing did not conclude on its first day and was adjourned for a continuation of testimony. The landlord and both tenants attended the hearing on both days, and the tenants had one witness to call. The landlord and the tenant each gave affirmed testimony. The landlord was also represented by legal counsel.

The parties provided evidentiary material prior to the commencement of the hearing, and the parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided. No issues with respect to service or delivery of documents or evidence were raised.

However, on the second day of the hearing it was determined that I had not been provided with amended applications filed by the tenant and by the landlord, nor was I provided with evidentiary material that the parties had exchanged. Counsel for the landlord submitted that since the male tenant had remained in attendance but the landlord's spouse was not permitted to remain in attendance until it was time for him to testify, the tenants would benefit by the spouse hearing testimony and then providing testimony. I disagree that the tenant's spouse ought to have been precluded from the hearing because the landlord has named both tenants in the Landlord's Application for

Dispute Resolution. All parties named in a proceeding are entitled to remain in attendance for the entire hearing, but witnesses who are not named as parties must be precluded from hearing other testimony before testifying.

However, I find that there has been a systemic error in that the material and applications provided by the landlords and the tenants were not received by the Arbitrator prior to hearing testimony.

I order that the applications on files A and B are hereby dismissed with leave to reapply. Further, having found that the dismissal is due to an administrative or systemic error, and not an error made by either of the parties, I recommend that neither party be required to re-pay a filing fee, and the parties will be at liberty to apply to recover the filing fees paid for these applications.

### Conclusion

For the reasons set out above, the landlord's applications and the tenants' applications are hereby 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: July 31, 2013

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Residential Tenancy Branch