



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND, MNSD, MNR, MNDC, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord. The application indicated that the landlord is seeking the following compensation:

- For damage to the unit, site or property,
- For unpaid rent or utilities,
- To keep all or part of the security deposit
- For money owed of compensation for damage or loss under the Act, regulation or tenancy agreement.

The landlord testified that the Notice of Hearing Package documents were served on the tenant in person at his place of employment. However, the tenant did not appear and the hearing proceeded in the absence of the tenant.

### **Issue(s) to be Decided**

Is the landlord is entitled to monetary compensation under section 67 of the *Act*?

### **Preliminary Matters**

#### **Missing Evidence**

In regard to the lack of evidence submitted with the landlord's application, the landlord made a request during the hearing they be permitted to either submit evidence in support of their claim after the hearing or, in the alternative be granted an adjournment so that the evidence could be submitted and served before the reconvened hearing.. The landlord stated that the invoices for the locks, cleaning and copies of fines imposed by the strata council were not available until after the landlord had already made the application for dispute resolution

I find that the Residential Tenancy Rules of Procedure, Rule 3.1, states that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the

applicant must file copies of all available documents, or other evidence at the same time as the application is filed, or if that is not possible, at least (5) days before the dispute resolution proceeding. If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent prior to the hearing as required, the arbitrator must apply Rule 11.6 which deals with the consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance.

This rule permits the arbitrator to adjourn a dispute resolution proceeding in cases where the party claims that the missing evidence was submitted to *the Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the dispute resolution proceeding*. However, in this instance the evidence in question was never submitted to the branch.

I find that the landlord had a window of time between April 23, 2014 and August 14, 2014 to submit the evidence. I find that the applicant's request to be given more time to submit evidence to prove the monetary claim stems from the landlord's failure to submit the evidence.

In such circumstances, Rule 6.1, of the Residential Tenancy Rules of Procedure, specifies what factors must be considered in allowing an adjournment for the purpose of receiving additional evidence from one, or both, parties.

One of the factors to be weighed is the degree to which the need for the adjournment arises out of the actions or neglect of the party seeking the adjournment. In this instance, I find that the hearing was on the landlord's application and the landlord did not submit relevant documents that were under their control for at least part of the time prior to today's hearing. I find that the landlord has not provided sufficient proof that the applicant did not have a fair opportunity to make these key evidentiary submissions.

In any case, before one party requests an adjournment it is necessary to try to obtain consent from the other party first. Moreover, evidence accepted for the purpose of supporting an adjournment also must be served on the other party.

Given the above I find that delaying the hearing and reconvening for the purpose of granting the applicant a second opportunity to submit evidence that could have been served on the other party submitted in advance of the hearing, would be prejudicial to the respondent and contrary to natural justice. I find that there is not adequate justification under the Act and Rules of Procedure to support granting an adjournment to allow the landlord to submit additional evidence.

The landlord's request was denied.

### **Background and Evidence**

The landlord testified that the tenancy began in 2009 or 2010 and the tenant suddenly vacated the unit without notice on March 31, 2014. The landlord testified that rent was \$710.00 and a security deposit of \$355.00 was paid.

The landlord did not submit a copy of a written tenancy agreement into evidence. The landlord testified that the tenancy was for a fixed term.

Submitted with the application filed on April 23, 2014, was a copy of a 5-page letter from the landlord to the tenant dated April 21, 2014. The letter included a chronology of the landlord's activities from March 2 to April 4, 2014 and provided details about the landlord's monetary claims. No other evidentiary material was submitted by the landlord to verify the existence and nature of this tenancy nor to support the monetary claims. However the landlord gave verbal testimony with respect to the claims.

The landlord stated that, because the tenant violated the Act by moving out of the unit without giving sufficient written Notice as required under the legislation, the landlord is entitled to be compensated for \$710.00 loss of rent suffered for the month of April and \$710.00 rent for the month of May 2014.

The landlord testified that the landlord advertised the unit starting in mid-April 2014 for several weeks without success. No copies of the advertisements were in evidence.

The landlord also testified that other costs incurred were fines that had been imposed by the strata, cleaning charges, storage and changing the locks.

### **Analysis**

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual cost of the loss or damage, and finally prove that the landlord took reasonable steps to minimize the loss.

In regard to the landlord's claim for loss of revenue for the months of April and May 2014 I find that the landlord did not submit sufficient proof to establish that element 3 of the test for damages was satisfied.

With respect to the other claims, including cleaning and changing the locks, I find that there is not adequate proof to meet elements 2 and 3 of the above test for damages.

Given the above, based on the testimony and evidence presented during these proceedings, I find that the landlord's monetary claim has no merit due to insufficient evidentiary proof and must therefore be dismissed.

Based on the testimony and evidence I hereby dismiss the landlord's claim in its entirety without leave to reapply.

The landlord is ordered to administer the security deposit held in trust for the tenant, in accordance with section 38 of the Act.

### **Conclusion**

The landlord is not successful in the application and the claims are dismissed.

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: August 21, 2014

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Residential Tenancy Branch

