



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord's agent and the tenants each testified to serving Application for Dispute Resolution packages by registered mail. Both parties acknowledged receipt of the other party's package.

The landlord testified that, as part of her evidence submitted, she provided to the tenants a letter requesting that they consent to an adjournment. Tenant JR testified that the package, including the letter addressing an adjournment request by the landlord was received by the tenants in April, 2015. The landlord provided evidence, in the form of the tracking history of her registered mail package that the package was sent to the tenants' address by registered mail on January 8, 2015. Pursuant to section 89 and 90 of the Act, the tenants were deemed to have been served with the landlord's Application for Dispute Resolution package with Notice of Hearing and the request for an adjournment on January 13, 2015, 5 days after its registered mailing. The landlord provided sworn undisputed testimony that she received no response from the tenants with respect to her adjournment request. Tenant JR testified that he saw the request in passing but did not respond.

### Preliminary Matter: Landlord's Request for An Adjournment

Rule 6 of the Dispute Resolution Rules of Procedure state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the

applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing". In this case, the landlord attempted to ensure this matter was adjourned prior to the hearing date however the tenants and did not respond to her request.

The landlord applied, at the hearing for an adjournment, testifying that she had given birth twelve hours prior to the hearing. The criteria provided for granting an adjournment, under Rule 6.4 of the Rules of Procedure are;

- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

The landlord testified that she had limited time to attend the hearing in the circumstances. She testified that she was at home with her newborn child. She also testified that she was not certain she would be able to participate in a fully alert manner, given all the circumstances. It is integral to the dispute resolution process to ensure that both parties have a fair opportunity to be heard, both providing evidence and making submissions in a prepared and considered way. I have found that landlord, for reasons beyond her control, was not in a position to present her submissions in a meaningful way at the time of the hearing.

Pursuant to the *Residential Tenancy Act*, and the Dispute Resolution Rules of Procedure Rule 6.3,

At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.

The tenants opposed the adjournment of this proceeding, testifying that they were both required to take time from work and child care to arrange. Given that this application is monetary in nature and does not involve the possession of the rental unit with respect to this tenancy, I find that the prejudice to the tenants is minimal. While it is unfortunate that they have also taken steps to attend this hearing, the landlord has not been neglectful or intentional in her acts leading to the adjournment application. Her evidence

was submitted for this hearing and she attended to the hearing on time as required. The landlord made attempts to advise the tenants prior to this hearing and, if they had responded to the landlord in some fashion, they may have avoided some of the impact of an adjournment of this hearing. I find the tenants would not be significantly prejudiced by a delay in this matter by adjourning the hearing. I find the objective of the Dispute Resolution process; to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants can only be met by adjourning this hearing.

Given the nature of the landlord's request, the request for an adjournment was granted. The hearing was adjourned.

### Conclusion

I Order that a reconvened hearing be scheduled. **Notices of hearing are included with this Interim Decision for the Landlord to serve to the Tenant within 3 days of receipt of this Interim Decision.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the reconvened hearing. For more information see our website at:

[www.gov.bc.ca/landlordtenant/](http://www.gov.bc.ca/landlordtenant/)

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020

**Elsewhere in BC:** 1-800-665-8779

The landlord is also ordered to provide the Branch with copies of all documentary evidence on which the landlord intends to rely. For their part, the tenants should supply their evidence to the landlord and to the Branch in accordance with Rule 4 of the Branch Rules of Procedure.

This Interim 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: May 08, 2015

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Residential Tenancy Branch