



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MNDC, MND, FF*

### **Introduction**

This hearing dealt with an application by the landlord, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of repairs, loss of income, and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim.

At the start of the hearing, the landlord stated that she had served evidence to support her claim on the tenant, approximately 10-15 days before this hearing. The tenant had not provided a forwarding address but had received the initial notice of hearing package because it was forwarded to her new address.

The landlord filed the application in July 2015 but mailed evidence for her monetary claim in December 2015. By this time the tenant's forwarding mail service had ended and therefore the tenant did not receive the evidence that the landlord was relying on to support her claim.

In addition the landlord stated that she had now increased her claim but had not officially amended her application. The landlord's evidence which she stated supported her entire claim was not before me.

### **Issues to be decided**

Did the landlord file evidence in compliance with the timelines set by the Rules of Procedure? Does the tenant need more time to respond to the landlord's evidence? Is the landlord entitled to her monetary claim for repairs?

### **Analysis**

Rule 3 of the *Residential Tenancy Branch Rules of Procedure* addresses how to serve the application and the applicant's evidence.

Rule 3.1 (d) states that together with a copy of the application for dispute resolution, the applicant must serve each respondent with copies of any evidence accepted by the Residential Tenancy Branch with the application or whatever is available to be served. The purpose of serving evidence to the respondent is to notify the person being served of matters relating to arbitration and to provide the person with an opportunity for rebuttal.

In this case, the landlord did not have her evidence available to be filed along with her application or at the time she served the notice of hearing on the tenant. Rule 3.5 states that if documents are not available to be filed with the application but which the applicant intends to rely upon as evidence at the hearing, these documents must be received at the Residential Tenancy Branch Office at least five days before the hearing and must be served on the tenant as soon as possible.

The tenant had not provided a forwarding address because she had a mail forwarding service in place. However by the time the landlord sent her the evidence package approximately five months later, the mail forwarding service had ended. Therefore the tenant did not receive the evidence that was mailed to her, in December 2015.

During this hearing, the tenant provided her new address to me and to the landlord. Since the tenant had not received the evidence that the landlord intended to rely upon, I have dismissed this application with leave to reapply. In the event that the landlord reapplies, the landlord now has the tenant's address to which she must send the notice of hearing package which will include evidence to support her application. The landlord must send the package in a timely manner and pursuant to section 38 which deals with the return of the security deposit.

### **Conclusion**

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: January 07, 2016

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Residential Tenancy Branch

