



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for return of their security deposit pursuant to section 38 of the *Act*; a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended and were given full opportunity to be heard and to make submissions.

The landlord testified, supported by documentary evidence that she has been unable to serve the tenants with her evidence for this hearing. The tenants were present for the teleconference however it was very difficult to hear their submissions. The tenants testified that they are currently residing outside of Canada and that they were uncertain where in Canada the landlord could send her materials. As well, they testified that, because they were out of the country, they were unable to have their materials available for reference during the hearing. As such, they sought an adjournment.

Preliminary Matter: Adjournment Request by Tenants

The tenants testified that they had left the country due to an emergency. They were uncertain how long they would be out of the country. It was very difficult to hear the tenants as they were not calling to the teleconference from a telephone. Their connection was very poor and I often could not make out what they were saying. I did understand them to say that because they did not have their materials in front of them and were calling from out of country, seeking an adjournment of this hearing.

Rule 7 of the Dispute Resolution Rules of Procedure addresses the appropriate procedure for seeking an adjournment of a hearing. In this case, the tenants made no

effort to contact the Residential Tenancy Branch or the landlord prior to this hearing with respect to the need for an adjournment.

The criteria for granting an adjournment are provided under Rule 7.9 of the Rules of Procedure,

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

The tenants testified that, despite an earlier dispute resolution hearing between the parties where monetary issues were canvassed, they need time to prepare for the hearing. The tenants acknowledged that the materials they would rely on in this hearing were the same materials presented at the previous hearing but that they did not currently have access to the materials so that they could refer to them during the hearing.

The tenants were not able to provide an estimated date when they might return to the country, making it virtually impossible to set a new hearing date after adjourning this matter. The tenants suggested that they were in the country for an emergency but offered little detail to support their request for an adjournment.

The tenants also acknowledged that they cannot provide an address within the country so that the landlord can serve her documents. The tenants were not able to provide any contact information at the time of this hearing. This places the landlord at a significant disadvantage in providing or receiving evidence or any other communication regarding this dispute resolution hearing.

Based on the tenants' inability to provide a timeline and any clear explanation of the request for an adjournment, or an address for service, I cannot foresee that an adjournment would result in a more thorough hearing with respect to this application.

I note that the tenants were assisted by an advocate present at the prior hearing but chose not to have an advocate present or assist with the logistical issues related to this hearing.

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 find the tenants have had a full opportunity to prepare their evidence and submissions in that they applied for dispute resolution several months prior to this hearing date. I note that the tenants did not advise the landlord or the Residential Tenancy Branch prior to this hearing that they were out of the country.

I find that the tenants must, at minimum, provide a method of service to the landlord respondent and access the teleconference in a manner that allows their submissions to be heard by all parties in attendance. As the tenants have not met this minimum requirement and as the tenants have not presented sufficient grounds to support their adjournment request, I dismiss the tenants' application for an adjournment of this hearing. I dismiss the tenants' application with leave to reapply in all of the circumstances.

Conclusion

I dismiss the tenants' application for a monetary order for damage or loss and their application for return of their security deposit 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 25, 2016

Residential Tenancy Branch

