



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, FF

Introduction and Conclusion

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlord requested the sum of \$2,586.00 in monetary compensation from the Tenant for damage to the rental unit, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference on September 12, 2017. Only the Landlords called into the hearing.

The Landlord, N.E., testified that she personally served the Tenant with the Notice of Hearing and the Landlords' Application on April 21, 2017. She stated that she did not provide the Tenant with any supporting evidence, such as the quotes to repair the damage or photos of the damage. She stated that she did not do so as she was waiting for a forwarding address from the Tenant. Notably, this evidence was also not available to me; a review of the residential tenancy branch records indicates no evidence was filed by the Landlords.

The *Residential Tenancy Branch Rules of Procedure* provide as follows:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

- copies of all other documentary and digital evidence to be relied on at the hearing.

When submitting applications online, the applicant must submit the required documents to the Residential Tenancy Branch directly or through a Service BC office within three business days of submitting the online Application for Dispute Resolution.

1.1 Objective

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

I find that the Landlords failed to serve their application materials on the Tenant as required by Rule 3.1 of the *Rules of Procedure*. One of the principals of natural justice is that a party to a dispute has the right to know the case against them which includes an opportunity to review any documentary evidence in advance of a hearing. In failing to serve evidence on the Tenant, the Landlords have not given the Tenant proper notice of the dispute, or the claims made against the Tenant.

I therefore dismiss the Landlord's claim with leave to reapply.

Should the Tenant fail to provide the Landlords with a forwarding address within one year of the end of the tenancy, the Landlords are entitled to retain the Tenant's security deposit pursuant to section 39 of the *Act*; for greater clarity I reproduce that section as follows:

- 39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
 - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

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: September 12, 2017

Residential Tenancy Branch