



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNRL-S, FFL, CNR, OLC, LRE, AS

### Introduction

This hearing dealt with applications from both Landlord GS and the tenants under the *Residential Tenancy Act* (the *Act*).

Landlord GS's application for dispute resolution named the tenants identifying themselves with the surnames appearing before (AKA) on the first page of this decision as Respondents. The landlord applied for

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

In their application identifying only KKP and JP as Respondent Landlords, the tenants identifying themselves with the surnames appearing after (AKA) on the first page of this decision applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:02 a.m. in order to enable them to call into this teleconference hearing scheduled for 10:30 a.m. Landlords KKP and JP attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord KKP (the landlord) testified that she was also representing her mother, Landlord GS in this matter, as her agent. She said that she manages this rental property for her mother.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of the Tenants' participation in this hearing, I order their application dismissed without liberty to reapply.**

Preliminary Issue – Service of Documents

The landlord's original application sought a monetary award of \$1,000.00 for unpaid rent that was owing when the landlord filed this application in early December 2017. Landlord JP gave sworn testimony that he handed the male tenant PMP a copy of the original application for dispute resolution and dispute resolution hearing package on December 12, 2017. The landlord testified that she placed copies of the same documents in female tenant WLP's mailbox on December 12, 2017. She testified that the rental unit was not vacated by both tenants until January 3, 2018, when a court appointed bailiff removed them from the premises.

On January 11, 2018, the landlord submitted an amended application for dispute resolution to the Residential Tenancy Branch, in which the landlord sought an increase in the monetary award to a total of \$8,984.80, an increase of \$7,984.80. This increase arose from additional expenses that had been incurred as a result of the tenants' overholding of their tenancy beyond the December 12, 2017 effective date identified in the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) served to the tenants on December 2, 2017. The landlord testified that Landlord JP handed a copy of this amended application to the boss of Tenant PMP at his place of work on January 11, 2018.

Section 89(1) of the *Act* establishes how an Application for Dispute Resolution for a monetary award may be served to Respondents. This section reads in part as follows:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;...*
- (c) by sending a copy by registered mail to the address at which the person resides...;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*

*(e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

In this case, neither tenant attended this hearing. As Landlord JP testified that he handed Tenant PMP a copy of the original dispute resolution hearing package on December 12, 2017, I accept that Tenant PMP has been served with the landlord's original application for a monetary award of \$1,000.00, plus recovery of the landlord's filing fee in accordance with section 89(1) of the *Act*. Since Tenant WLP was not served with a copy of the original application in accordance with one of the ways identified in section 89(1) for serving an application, I dismiss the landlord's application for the original \$1,000.00 monetary award naming her as a Respondent without leave to reapply.

Rules 4.3 and 4.6 of the Residential Tenancy Branch's Rules of Procedure establish that amendments to applications for dispute resolution must be served no later than 14 days before a hearing. In this case, the landlord did not submit this amendment to the original application or attempt to serve the tenants with this amendment until four days before this hearing. Even had the amendment been properly served to the tenants, which was not the case, the lateness of this amendment would have precluded me from considering the landlord's amended application. In this instance, the method selected by the landlord to attempt to serve the amended applications is not one available to the landlord. Handing documents to an employer for delivery to a Respondent is not one of the ways permitted for service of applications for dispute resolution under section 89(1) of the *Act*.

For these reasons, I dismiss the landlord's amended application for an increased monetary award of \$7,984.80 with leave to reapply.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award of \$1,000.00 in unpaid rent owing as of December 1, 2017? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

This month to month tenancy commenced on March 1, 2017. According to the landlord, monthly rent was set at \$2,000.00, payable in advance on the first of each month. The landlord continues to hold the \$1,000.00 security deposit paid by the tenants on February 17, 2017.

The landlord's 10 Day Notice identified \$2,000.00 in unpaid rent owing as of the December 2, 2017 date of its issuance. The landlord testified that there have been no payments towards this tenancy by either tenant since she issued the 10 Day Notice to the tenants on her mother's behalf. The tenancy ended on January 3, 2018.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Both tenants are jointly and severally liable for any responsibilities that result from signing the tenancy agreement.

There is undisputed sworn testimony supported by written evidence that the tenants did not pay any rent for December 2017. They were supposed to have vacated the rental unit on the effective date of the 10 Day Notice, December 12, 2017. In considering this matter, I also note that section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

When the landlord applied for a monetary award of \$1,000.00, she would not have known that the tenants would overhold their tenancy beyond December 12, 2017, and that the added expense of a court appointed bailiff, rental loss for January 2018, additional utility costs, and other expenses to end this tenancy would be incurred. Under these circumstances, I am limited in issuing a monetary award to the \$1,000.00 identified in the landlord's original application for dispute resolution, plus the recovery of the landlord's filing fee for this application. For these reasons, I allow the landlord's application for a monetary award of \$1,000.00 for unpaid rent owing from December 1 to 15, 2017, equivalent to one-half month's rent.

To implement this decision, I allow the landlord to retain the \$1,000.00 security deposit for this tenancy. As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from Tenant PMP, the only tenant served with the application for a monetary award in accordance with the *Act*.

I dismiss with leave to reapply the remainder of the landlord's application for a monetary award for unpaid rent commencing on December 16, 2017. I also dismiss with leave to reapply the remainder of the landlord's amended application for a monetary award as it was submitted late and was not served to either of the tenants in accordance with section 89(1) of the *Act*.

### Conclusion

I order the landlord to retain the \$1,000.00 security deposit for this tenancy in order to implement my finding that the landlord is entitled to a monetary award of \$1,000.00 for unpaid rent owing for the first half of December 2017.

I also issue a monetary Order in the landlord's favour against Tenant PMP in the amount of \$100.00 in order to recover the landlord's filing fee for this application. The landlord is provided with these Orders in the above terms and Tenant PMP must be served with this Order as soon as possible. Should Tenant PMP fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The remainder of the landlord's application for a monetary award, including rent owing for the last half of December 2017, as well as any additional rent owing for this tenancy, unpaid utilities, and any other losses or damages arising out of this tenancy, is dismissed with leave to reapply.

The tenants' application is dismissed without 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 15, 2018

---

Residential Tenancy Branch