



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNSD FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant did not attend this hearing. The landlords testified that the tenant was served with the Application for Dispute Resolution and Notice of Hearing by registered mail on June 21, 2019. The landlords testified that on September 19, 2019, just 7 days before this hearing, the landlords sent a second package to the tenant by registered mail which contained all the landlord's documentary evidence in support of the application. The landlords confirmed that none of this documentary evidence was included in the original application. As per the deeming provisions of the Act, the tenant could be deemed to have received this evidence on September 24, 2019, just two days before the hearing date. The landlords also did not submit a copy of this evidence to the Branch until September 19, 2019.

Rule 2.5 of the Residential Tenancy Branch (the "Branch") Rules of Procedure (the "Rules"), requires that to the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*].

As per Rule 3.17, evidence not provided in accordance with Rule 2.5 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Rule 3.11 provides that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

As per Rule 3.14, at a minimum, evidence that meets the criteria of being new and relevant and that was not available at the time the application was made must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

The landlords were advised that as they unreasonably delayed the service of their evidence on the tenant, I would not be accepting or considering this late evidence. The landlords were provided the option of proceeding with the hearing, without me considering its documentary evidence, or refiling the application and properly serving the tenant with the application and supporting evidence.

The landlords advised they would like to withdraw this application and refile a new application. As the tenant did not attend the hearing, I find it would not be prejudicial to permit the landlord to withdraw and refile this application.

The landlord's application is hereby withdrawn/cancelled.

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 26, 2019

Residential Tenancy Branch