# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOWER MAINLAND SOCIETY FOR COMMUNITY LIVING and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Issues(s) to be Decided

Have the Respondents been provided with adequate notification of the landlord's Application to enable them to know the case against them and to properly respond to the Landlord's claim? If so, is the landlord entitled to a monetary award for damage or other money owed during the course of this tenancy? 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 andlord entitled to recover the filing fee for this application from the tenant(s)?

Preliminary Issues - Service of Documents and Sufficiency of Information Contained in Application to Enable the Respondents to know the Case Against Them

The landlord's advocate (the advocate) gave sworn testimony that they sent both Respondents copies of the dispute resolution hearing package and supporting written material then available by registered mail on August 25, 2019. The advocate provided the Canada Post Tracking Numbers to confirm these registered mailings. The advocate testified that the Canada Post Online Tracking System confirmed that both packages were signed as successfully delivered to the Respondents on August 27, 2019. The advocate also said that they attended the Respondents' office on October 11, 2019, for the purpose of serving the dispute resolution hearing package, and additional written, photographic and digital evidence to the Respondents. The landlord and the advocate testified that they gave these materials to the Respondent's spouse, who assured them that they would forward the material to the Respondent. The

landlord could not recall the exact date when these documents were provided to the Respondent's spouse, but testified that this did occur in October.

In sworn testimony and in their written evidence, Respondent DK (the Respondent) who is also the Executive Director of the other Respondent Society (the Society), maintained that they did not receive these packages until September 24, 2019. They also gave sworn testimony supported by written evidence that they did not receive the landlord's second package of written, photographic and digital evidence until October 15, 2019.

After checking the Canada Post Online Tracking System during the hearing, I advised the parties that the advocate's information regarding delivery of the dispute resolution hearing package and first set of written material appeared to be accurate. I noted that the Online Tracking System revealed that these packages were successfully delivered to the Respondents on August 27, 2019. At that stage, the Respondent confirmed that someone from their office had picked up the packages as declared by the advocate on August 27, 2019, but that they did not personally receive these documents until September 24, 2019.

I advised the parties that whether or not one of the Respondents' staff members picked up the hearing packages and forwarded them on to both Respondents is immaterial to the service of these documents. As long as delegated individuals received these documents, they are considered served in accordance with sections 88, 89 and 90 of the *Act* on August 27, 2019, the day they were actually retrieved from Canada Post. Even if these documents had not been picked up by one of the Respondents' representatives on August 27, 2019, they would have been deemed served on the fifth day after their registered mailing.

Although there were no disputes as to whether the written evidence of the parties was served to one another, the Respondent did maintain that the Landlord had served the second set of material on October 15, 2019, thirteen days before this hearing.

The Residential Tenancy Branch's (the RTB's) Rules of Procedure establish that to the extent possible applicants for dispute resolution are to provide Respondents with all of the information upon which they intend to rely with their application for dispute resolution (see Rules 3.11. 3.13 and 3.14). In addition, these Rules also require applicants to provide all of their written evidence to the other party at least fourteen days before a hearing (see Rule 3.14). In most cases, a failure to strictly abide by these provisions may be overlooked if the Arbitrator is satisfied that the Respondent has had sufficient time to consider the late evidence in order to prepare for the hearing.

In this case, the Respondent submitted a written request for an adjournment to enable the Society's lawyer to study the landlord's documents entered into written, photographic and digital evidence. The Respondent maintained that the delayed delivery of both the hearing package and the second evidence package hampered the Respondents from preparing a proper defence of their position with respect to the landlord's claim. The Respondent requested an adjournment until January 2020 to enable the Respondents to have a proper opportunity to address the case against them.

*Residential Tenancy Branch Rules of Procedure* provide guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, “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.*

Rule 7.11 establishes that if a request for adjournment is not granted that the Arbitrator is to provide written reasons as to why the request has been refused.

In the course of examining the Respondents' request for an adjournment, it became necessary for me to also consider the Respondent's claim that they had received too little time to consider the landlord's application and to provide an adequate response. In this regard, I note that the landlord is seeking a monetary award of $35,000.00, the maximum amount permitted under the *Act*.

Analysis - Service of Documents and Sufficiency of Information Contained in Application to Enable the Respondents to know the Case Against Them

Rule of Procedure 3.12 provides guidance to Arbitrators with respect to potential breaches of the principles of natural justice. One of the fundamental tenets of those principles is that a Respondent is entitled to know the case against them and have a proper opportunity to address that case.

Rule of Procedure 3.7 is designed to ensure that Arbitrators are able to provide parties with a fair and efficient dispute resolution process in a teleconference hearing where references to specific documents and other pieces of evidence are essential. Relevant portions of Rule 3.7 are as follows:

*3.7 Evidence must be organized, clear and legible*

*All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office. For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2". To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible...*

Section 59 of the *Act* reads in part as follows:

(2)An application for dispute resolution must

*(b)include full particulars of the dispute that is to be the subject of the dispute resolution proceedings;...*

*(3)Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director...*

*(5)The director may refuse to accept an application for dispute resolution if...*

*(c)the application does not comply with subsection (2)...*

In this case, there were many issues that made it difficult for the Respondents and, for that matter, this Arbitrator, to fully understand the landlord's claim and how the landlord arrived at the $35,000.00 figure claimed.

The landlord's application for dispute resolution identified the claim as follows:

***Amount owed:*** *$11,530.00*
***Applicant's dispute description:***
*JAN 2019 LOSS OF REVENUE UPPER $4,750.00 JAN 2019 LOSS OF REVENUE BSMT #1 $1,695.00 JAN 2019 LOSS OF REVENUE BSMT #2 $1,695.00 FEB 2019 LOSS OF REVENUE BSMT #1 $1,695.00 FEB 2019 LOSS OF REVENUE BSMT #2 $1,695.00*

***Amount owed:*** *$23,470.00*
***Applicant's dispute description:***
*LANDLORD REQUESTS A MONETARY ORDER FOR DAMAGES*

In addition, the landlord requested the recovery of their $100.00 filing fee for this application.

Since there is a $35,000.00 limit on monetary awards that parties can claim through the *Act*, the total of the above figures is actually in excess of that amount. A reduction in the requested monetary award of $100.00 to bring the application within my jurisdiction to proceed could easily have been undertaken at the hearing, I do not view this deficiency as one that would have prevented my considering the landlord's application.

In addition, I also note that the landlord or their advocate received the Notice of Hearing from the RTB on August 21, 2019, and had until August 24, 2019 to serve these documents to the Respondents in order to remain in compliance with section 59(3) of the *Act* and Rule of Procedure 6.4. Again, given that the advocate testified that the dispute resolution hearing package was sent on August 25, 2019, this one day delay in complying with these provisions would also not prevent my consideration of the landlord's application.

Of more concern is the landlord's identification of Unit 3 as the location of the rental unit in this application. From this application, it would appear that the monetary amount claimed by the landlord applied to only Unit 3 of this building, although as noted above the application referenced unpaid rent owing from Basement Units #1 and #2. Similar references were made in one of the documents entered into written evidence by the landlord, entitled "List of Invoices and Receipts".

The landlord entered into written evidence copies of four Residential Tenancy Agreements. The first of these, for the upper floor of this rental property was for a one year fixed term that commenced on August 1, 2010. Both the Society and the Respondent were identified as the tenants in this Agreement, and the Respondent signed on behalf of both tenants. There is no Unit number identified on this first Agreement.

The second of the Tenancy Agreements was for a tenancy in what the landlord described as the lower basement level, which commenced on October 1, 2011, again for a one-year fixed term. This Agreement

identified the Respondent as the sole tenant, which the landlord and the Respondent signed on September 30, 2011. Once more there was no Unit number identified on this Agreement.

At the hearing, the landlord said that the third Agreement was for another lower level rental unit in this building. This third Agreement listed both Respondents as tenants and was for a one-year fixed term commencing on January 15, 2015. Someone signed for the Society for this Agreement, but no one for the Respondent. Since the Respondent did not sign this third Agreement, it is possible that the Respondent may not be responsible for liabilities attached to that third Agreement. Unlike the previous two Agreements, this Agreement identified Unit #3 as the location of the rental unit.

The last of these Agreements identified only the Society as the tenant, and was signed on August 1, 2017 by the Society's Manager of Services. The landlord testified that this Agreement was for a one-year fixed term for the entire property for a monthly rent of $6,140.00, which was also to enable the Society to move into the upper level of this property to use as its office space as of August 1, 2017 when this fixed term tenancy commenced. There is no reference to a Unit number on this Agreement, which coincides with the landlord's claim that by that time, the rental was for the entire property. The Respondent gave sworn testimony and written evidence that the Manager of Services was not authorized to sign this Agreement and questioned the authenticity of the signature on this Agreement.

At the hearing, the landlord and the advocate gave sworn testimony that the landlord's written evidence from the landlord's USB was uploaded on the RTB's Service Portal by RTB staff. The USB was then returned to the advocate. The advocate testified that they were provided with an email from the RTB staff member confirming that they had uploaded this material and were returning the USB to the advocate.

At the hearing, this became somewhat problematic as the landlord and advocate referred to the contents and arrangement of documents on their USB, but the documents themselves were not arranged in that order and many documents, including photos and receipts on the Service Portal were unlabelled and were very difficult to locate. The advocate testified that they did not prepare a Monetary Order Worksheet, as this form prepared by the RTB would not have enabled them to properly list all of the landlord's claim. Rather, the landlord and advocate maintained that another document identified as "List of Invoices and Receipts" contained all of the necessary information in order to summarize the Landlord's claim. The advocate noted that in the landlord's USB, a copy of which was provided to the Respondents, each of the receipts and invoices were listed behind the relevant portion of that List.

While I accept that the advocate did ask for and obtain assistance from RTB staff to have the contents of the USB deposited on the RTB's Service Portal, the landlord and advocate chose not to submit their evidence directly nor did they employ the commonly used Monetary Order Worksheet to summarize their claim. Rather, their List was one of over 400 documents and photographs placed in the RTB's Service Portal to support this application.

The landlord claimed that the last Agreement took precedence over all of the previous ones, and was the Agreement in place when the tenants vacated the rental building by January 1, 2019. The landlord said that each of the previous security deposits were transferred over to the overall Agreement that was signed on August 1, 2017. I note that this fourth Agreement did not identify the Respondent as one of the tenants, did not identify a Unit #, and the Respondent did not sign the fourth Agreement. The Respondent maintained that the fourth Agreement was "forged" by the landlord or their representatives

and that the only legal Agreements in place by the end of the tenancy were the three that predated this fourth Agreement.
While the landlord did use the RTB's standard Condition Inspection Report, they did not complete it on a room-by-room basis; instead noting "Damages -see attached photos." I also note that the Condition Inspection Report entered into written evidence by the landlord referenced inspections that occurred when the fourth tenancy began on August 1, 2017 and at the end of this tenancy dated January 1, 2019, although the landlord said that this inspection did not occur until January 5, 2019. The landlord said that no joint move-in or move-out condition inspections were undertaken for the earlier tenancies, and the security deposits were not returned to the Respondents at that time, but applied to the tenancy that began on January 15, 2015.

The Respondent confirmed that they have not provided the landlord with their forwarding address in writing. As such, the landlord is not yet under any obligation to return the security deposit for the tenancy that ended in January 2019.

In considering the Respondents' request for an adjournment, I find that to proceed even with an adjournment of the landlord's application would not be able to remedy the confusing nature of the landlord's application. There are multiple Tenancy Agreements, some identifying both Respondents as tenants, and others not. Some of these Agreements identify Unit 3, the one identified by the landlord on their application for dispute resolution, but most with no unit number identified. Since the landlord's application includes an amalgamation of multiple unit numbers and losses apparently attributable to all of the units in this building, it is not at all surprising that the Respondents, and for that matter, this Arbitrator are somewhat confused as to the landlord's claim and who would be correctly listed as Respondents and for which locations within this building. According to the landlord, one of the former residential units of this building was used for office space and not residential use for part of the period in question

I have given serious consideration to adjourning this matter to enable the Respondent to seek advice from their legal counsel, and potentially make new written submissions. However, for the reasons outlined above, I doubt that the inconsistencies in the way that the landlord has framed this application would enable a fair consideration of the landlord's claim should an adjournment be granted. The same problems identified above would be in place whether or not an adjournment were granted. While I am delegated powers to amend an application, the magnitude of the amendments required would be too extensive and could likely only be remedied by a new application or applications from the landlord.

As discussed at the hearing and in accordance with the powers delegated to me pursuant to sections 62 and 64 of the *Act*, I find that the best way to ensure that the landlord and the Respondent(s) are able to obtain a fair hearing of this dispute is to dismiss the landlord's existing application with leave to reapply. I take this action in accordance with Rule of Procedure 1, which establishes that "the objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants." To proceed with this hearing or to adjourn it to another time would not in my opinion lead to a fair, efficient and consistent process to consider the landlord's application for this monetary claim.

If this tenancy did not end until January 2019, as the landlord maintained, the landlord has ample time to reapply. In so doing, I advised the landlord that they may choose to make separate applications pursuant to each of the previous Agreements or to combine them into one application.

At the hearing, the landlord and their advocate expressed concern about obtaining an address where the landlord could serve documents for a future application, I ordered the Respondent to provide the landlord with their mailing address for the purposes of receiving documents. In accordance with section 62 of the *Act*, I direct that until further notice by the Respondents that the mailing address for service of documents by the landlord to the Respondents for this/these tenancies is the mailing address provided by the Respondent during this hearing and as identified on the first page of this decision.

At the hearing, the landlord also stated that they may choose to pursue an amount greater than the $35,000.00 monetary limit established pursuant to the *Act* through an application to the Supreme Court of British Columbia. In this regard, I note that the List of Invoices and Receipts totalled the landlord's losses at an amount in excess of $51,000.00. Should the landlord choose to make such an application to the Supreme Court of B.C., the Residential Tenancy Branch would have no jurisdiction to consider the landlord's application.

Conclusion

The landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any time frames established pursuant to the *Act*.

In coming to this decision, I wish to assure both parties that I am taking this action to ensure that they have a fair mechanism in place to consider this dispute, one where both parties have a clear understanding of what is being sought.

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: October 28, 2019

Residential Tenancy Branch