



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

### **Issue(s) to be Decided:**

Is the Tenant entitled to the return of security deposit?

### **Background and Evidence:**

Both the Tenant and the Agent for the Landlord were present when I dialed into the teleconference at the scheduled start time.

The Tenant stated that the Dispute Resolution Package was sent to the Landlord by registered mail. He stated that he was driving and that he was, therefore, unable to provide the date the Dispute Resolution Package was served to the Landlord.

The Tenant was asked if he would like to pull over to the side of the road so that he could give his full attention to the hearing. The Tenant abruptly exited the teleconference, without responding to this question.

The Tenant exited the teleconference at approximately 1:35 p.m. The Landlord and I remained in the teleconference until 1:57 p.m., at which point I terminated the teleconference.

The Agent for the Landlord was advised that I intended to adjourn the hearing as it was possible the Tenant was unable to remain in the teleconference due to technical difficulties.

The Agent for the Landlord argued that the hearing should not be adjourned as the Tenant was not properly prepared for the hearing, given that he was driving during the teleconference.

Analysis:

Although the Agent for the Landlord was advised, during the hearing, that I intended to adjourn the hearing, my final decision is that the hearing should not be adjourned.

In determining that the hearing should not be adjourned I was guided by Rule 7.8 of the Residential Tenancy Branch Rules of Procedure, which reads:

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

In these circumstances, the Tenant exited the teleconference without requesting an adjournment. As of 4:00 p.m. on February 4, 2020, there was nothing in the Residential Tenancy Branch records to indicate the Tenant had contacted the Residential Tenancy Branch to indicate he had difficulty continuing with the teleconference or to request an adjournment. I therefore find that I have insufficient evidence to determine whether the Tenant actually wants an adjournment or if he simply decided to abandon his claim, rather than pulling over to the side of the road.

In determining whether or not the hearing should be adjourned on my own initiative, I was guided by Rule 7.9 of the Residential Tenancy Branch Rules of Procedure, which reads:

7.9 Criteria for granting an adjournment

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.

In these circumstances, there are no oral or written submissions to consider from the Tenant. I have considered the oral submissions of the Agent for the Landlord, and I concur with her submission that the Tenant was not adequately prepared for the hearing, given that he was driving during the teleconference.

In the event that the need for an adjournment was related to the Tenant's inability to participate in the hearing because he was driving, I would not grant an adjournment because the need for the adjournment is directly related to the Tenant's failure to properly prepare himself for the hearing.

Given that the Agent for the Landlord was prepared to proceed with the hearing today, I find that an adjournment would unduly prejudice the Landlord, as he, or his agent, would have to arrange to attend a second hearing at a later date.

I find that I have insufficient information to determine if an adjournment will result in a resolution to the issue in dispute. I find it entirely possible that the Tenant simply decided to abandon his Application for Dispute Resolution when he terminated the teleconference, in which case the Application for Dispute Resolution has been resolved.

My initial decision to adjourn the hearing was based on my attempt to ensure that the Tenant was provided with a fair opportunity to be heard. This was based on my concern that the Tenant was prevented from continuing with the hearing due to a technical difficulty or a reason beyond his control.

In retrospect, I find that it is incumbent of the Tenant to file an Application for Review Consideration if he was prevented from participating in the hearing for reasons that could not be anticipated and/or were beyond his control. In the event the Tenant is able to establish that he could not proceed with the hearing for reasons that could not be anticipated and/or were beyond his control, I would expect his Application for Review Consideration would succeed and he would be given an opportunity to be heard.

In the absence of any evidence to establish that the Tenant did not simply opt to abandon the teleconference, I find that the Tenant did not diligently pursue his Application for Dispute Resolution. I therefore dismiss the Application for Dispute Resolution, without leave to reapply.

Conclusion:

I dismiss the Application for Dispute Resolution, 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: February 04, 2020