



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL, MNDL-S and FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for compensation for unpaid rent, pursuant to section 67 of the *Act*;
- a monetary order for loss under the *Act*, the regulation or tenancy agreement, pursuant to section 67 of the *Act*;
- an authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 72 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 2:00 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord and her advocate FA attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, her advocate and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord and her advocate confirmed they are aware this hearing can not be recorded and that this matter is not public.

### Preliminary Issue – Service of the Application for Dispute Resolution

To proceed with the hearing, I must be satisfied the respondents have been properly notified of this hearing as well as all claims against them and all supporting evidence the landlord is submitting to support those claims.

The Rules of Procedure are to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. Rule of Procedure 2.5, “Documents that must be submitted with an Application for Dispute Resolution,” states the following (emphasis added):

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;
- 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 in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

Rule of Procedure 3.7, “Evidence must be organized, clear and legible,” states the following (emphasis added):

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.**

Rule of Procedure 3.13, “Applicant evidence provided in single package,” states:

Where possible, copies of all of the applicant’s available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office **and served on the other party in a single complete package.**

**An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute**

The landlord affirmed she served the notice of hearing and her evidence (the application) to both tenants by electronic mail on May 11, 2020. On June 02, 2020 the landlord served an amendment to the application and further evidence.

New evidence was served to the tenants by electronic mail on June 04, 05, 22, July 03, August 08, 11, 12, 14 and 20 of 2020.

The landlord served evidence on 11 different dates. The landlord uploaded 178 files as evidence documents. There is no index organizing these files and many of them are repeated files. By failing to either provide an index or compile all evidence into one file, the tenants' ability to prepare a response to the landlord's claims is prejudiced.

Furthermore the landlord served multiple documents by electronic mail without adhering to the rules for this type of service. The Director's order dated March 30, 2020 allowing for service by electronic mail was rescinded on June 23, 2020, yet the landlord used electronic mail after June 23, 2020 and prior to obtaining two sub-service orders on August 13, 2020.

The landlord testified she did not know about the rules of procedure and submitted new documents over time because they were not available when the application was first served. However, the landlord failed to explain why documents were served on 11 different dates, including several almost consecutive dates (June 04 and 05, August 08, 11, 12, 14 and 20).

I am not satisfied the respondents have been properly notified of the landlord's claims and supporting evidence due to how and when the landlord gave the information to the respondents and the Residential Tenancy Branch.

When I advised the landlord of my conclusion she advised me it is unfair and a different arbitrator should be assigned to her next application.

### Conclusion

I dismiss the landlord's application for a monetary order for unpaid rent and compensation for damage and loss under the Act and for an authorization to retain the tenant's security deposit with leave to reapply.

I dismiss the landlord's application for an authorization to recover the filing fee 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: September 01, 2020

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Residential Tenancy Branch