



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL, MNDL-S, MNSD, MNDCT, FFT**

Introduction

This hearing was scheduled to deal with monetary cross applications. The landlord applied for a Monetary Order for unpaid rent and utilities, damage to the rental unit; and other damages or losses; and, authorization to retain the security deposit. The tenants applied for return of the security deposit and compensation for other damages or losses.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of the hearing documents and evidence upon each other.

I determined the landlord did not serve the proceeding package to the tenants in a manner that complies with the Act since he sent the two proceeding packages in a single envelope via courier. Section 89(1) requires an applicant to serve each respondent separately either in person, or by registered mail. Registered mail is any product provided by Canada Post that requires a signature.

I also determined the landlord failed to serve the Amendment in a manner that complies with the Act. An Amendment is to be served in accordance with section 89(1) of the Act, which would be by personal service or registered mail. Further, an Amendment must not be provided as soon as possible but no later than 14 clear days before the hearing. Posting on the door on December 4, 2020 does not meet the method for service and timing requirements for an Amendment.

I also noted inconsistencies in the amount claimed on the landlord's Application and Amendment when compared to the Monetary Order worksheets.

The tenants indicated they were prepared to proceed with respect to the landlord's original claim, as set out on the Monetary Order worksheet dated September 17, 2020. The landlord requested withdrawal of his Application, without prejudice, so that he may properly set out and serve his claims. I informed the parties that if the landlord did withdraw, I would order return of the security deposit since the time for making a claim against the security deposit has passed. The landlord acknowledged he understood this.

The parties confirmed that the landlord was holding \$650.00 for the security deposit and the tenant had given written consent for a deduction of \$150.00 for cleaning, leaving a balance due to the tenants of \$500.00.

As for the tenant's proceeding package and evidence, I determined the tenants failed to serve their hearing documents and evidence to the landlords in a manner that complies with the Act and Rules of Procedure and their failure resulted in the landlords being unaware of the tenant's claims against them. The tenants had not printed off the proceeding package provided to them, as required. Rather, they included it on a USB stick that also included their evidence. The tenants did not confirm the with the landlord that the landlord could see/hear the content on USB stick, as required under the Rules of Procedure. The landlords stated they did not put the USB stick in their computer given the acrimonious relationship with the tenants. Given the tenant's failure to serve the landlords with their proceeding package, I dismissed the tenant's Application for Dispute Resolution with leave to reapply.

Given the landlord's request for withdrawal, and the tenant's claims were dismissed with leave to reapply, I grant the landlord's request for withdrawal, without prejudice, and I dismiss the landlord's application with leave to reapply.

In keeping with Residential Tenancy Policy Guideline 17, where a landlord makes a claim against the security deposit and the landlord's claims are dismissed, the Arbitrator shall order return of the security deposit to the tenant. In this case, the landlord's claims were dismissed; however, the time for making a claim against the security deposit has passed. Accordingly, I find it appropriate to order the landlord to return the security deposit to the tenants without delay and I provide the tenants with a Monetary Order to ensure repayment is made. Given the parties' consistent testimony that the tenants had given the landlord written consent to make a \$150.00 deduction from the \$650.00 security deposit, leaving a balance owing to the tenants of \$500.00, I order the landlord to return the balance of \$500.00 to the tenants without delay.

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: December 18, 2020

Residential Tenancy Branch