



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNSD FF

Introduction

The Landlord filed an application for dispute resolution in July of 2020 and a hearing occurred in November 2020. The Landlord did not attend the hearing, but the Tenants did. Subsequently, a decision was rendered on November 23, 2020. A monetary order was issued against the Landlord.

Subsequently, the Landlord applied for a review consideration, and she provided evidence to show that she was unable to attend the hearing due to circumstances beyond her control. A new hearing (review hearing) was ordered as a result.

At a review hearing, I may confirm, vary or set aside the original decision or order.

This review hearing is being held to hear the merits of the initial application, submitted on July 31, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- a monetary order for unpaid rent and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

Both parties attended the hearing on March 2, 2021, and provided testimony. The Tenants confirmed receipt of the Landlord’s application package and Notice of Dispute Resolution. However, the Landlord did not include any of her documentary evidence in any of the packages sent to the Tenants. The Landlord stated she just uploaded her documents for my consideration, and assumed the Tenants would be able to access the files. The Tenants also did the same; they uploaded their evidence to the website, but

did not serve any copies of that evidence to the Landlord, as they thought it would all be accessible by all parties through the website.

As stated in the hearing, and as laid out in the Rules of Procedure, parties are expected to serve each other with complete copies of all documentary evidence they wish to rely on at the hearing. Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the applicant's evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondents not less than 14 days before the hearing. Further, according to Rule 3.15, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Neither the Landlord nor the Tenant presented any explanation as to why they did not serve their evidence to the other party, and in accordance with the timelines established under the Rules. Neither party provided any explanation showing that any of their evidence was "new and relevant", or why it was not available to serve to the other party long before the hearing. It appears the parties had the evidence available to them, but failed to follow the Rules of Procedure. I find this is detrimental to procedural and administrative fairness, and I find that both the Landlord's and the Tenants' documentary evidence is not admissible for the hearing today.

Preliminary Matters

On the Landlord's application, she indicated she is seeking monetary compensation for unpaid rent in the amount of \$230.00, and for \$1,634.00 in other damages. When the Landlord filled out the application, she scattered varying amounts in different fields of the application form. After trying to determine what the above amounts are comprised of, based on what the Landlord had submitted, I note that the amounts she inputted into the "description" field do not add up to the amounts she listed on her application as a "total". Some of the text the Landlord inputted into the description field appears incomplete and cut off. The Landlord presented a scattered and confusing application for monetary compensation, which was not easy to understand or discern. The Tenants also found the application somewhat unclear.

I note the Landlord also failed to provide any detailed breakdown or monetary worksheet to support how she arrived at the amounts listed on the application, and what items were included in the totals.

I have reviewed the statements from both parties, and I turn to the following rules of procedure:

2.5 Documents that must be submitted with an Application for Dispute Resolution

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].*

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

I note the Landlord's claim is for a nearly \$2,000.00, and is composed of many different items. It appears only some of the items were noted on the application form. I also note the Landlord has no admissible documentary evidence to support what she is seeking, and why, and she provided no clear or reliable breakdown or calculation of what she is owed on any sort of worksheet.

I find it is prejudicial to the respondent to not have a monetary order worksheet, showing how the Landlord arrived at the amount she listed, especially given the amounts noted in the description field of the application and Notice of Hearing are incomplete. Without a monetary order worksheet, or a clear breakdown on the application form itself, it is difficult for me to understand the nature and basis of the application.

In an application for monetary compensation, the burden of proof is on the applicant to prove that basis for their claim. In this case, I find the Landlord has not sufficiently done this. Further, the Landlord did not submit the required documents (monetary order worksheet detailing the monetary claim being made). I find the Landlord has failed to include the "full particulars" of her claim in a clear understandable manner. This issue could have been significantly mitigated if the Landlord had included a worksheet or laid the monetary items out, completely, in the application itself. I dismiss her claim with leave to reapply, pursuant to section 59(2)(b) of the Act

I note the following Policy Guideline # 17 – Security Deposit and Set off:

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute for its return.

Typically, a Landlord would be ordered to return the security and pet deposits, following a dismissed application from the Landlord to retain the deposits. However, in this case, the parties could not agree on what the amount of the deposits were, and when they were paid. Neither party had any admissible documentary evidence to demonstrate what was paid in terms of deposits. As such, I decline to make any orders regarding the return of the deposits, as that will have to be determined when and if that issue is reapplied for.

The Landlord is granted leave to reapply for monetary compensation and to claim against the deposits. However, this decision does not extend any time limits defined under the Act with respect to the deposits. I encourage both parties to attend any future dispute resolution hearings regarding the security and pet deposits with properly served and admissible documentary evidence to demonstrate what was actually paid in terms of a deposit.

Conclusion

The decision and order issued on November 23, 2020, is set aside, and of no force or effect.

The Landlord's application is dismissed in full, with 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: March 02, 2021