



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for \$12,000.00 in damages; a monetary order for damage or compensation for damage of \$6,600.00, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of her Application filing fee.

The Tenants and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In his Application, the Landlord claimed \$18,600.00 in compensation from the Tenants; however, the Landlord also submitted additional documentary evidence on May 5, 2021, which included a monetary order worksheet with a total amount claimed being \$38,082.55. I asked the Landlord if he had submitted an amendment to his initial claim to incorporate this increased amount. The Landlord said:

That's what the second set of evidence was. When I initially filed it, I had no idea what the damage was. I made it up, but after getting the quote, they didn't give me the final numbers until recently. That is the amount. That's why I sent the additional evidence as I did. They gave me an estimate, but it changed as the work finished.

The Landlord said that he had someone serve his additional evidence on the Tenants in person on May 5, 2021, although, he did not submit any proof of this service. The

Tenants said they did not receive the additional evidence.

Rule 4 of the Rules of Procedure sets out how a party may amend an application.

Rule 4 – Amending an Application for Dispute Resolution

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter, or remove claims made in the original application.

. . .

Further, Rule 4.6 addresses the need to serve amendments on other parties.

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing. .

[emphasis added]

In addition, section 58(2) of the Act states that the director must not determine a dispute

if the amount claimed for debt or damages is more than the monetary limit for claims under the *Small Claims Act* (\$35,00.00). The Landlord's revised claim is for over \$38,000.00.

I find that proceeding with the hearing despite the Landlord's failure to comply with the Act and the Rules of Procedure would be prejudicial to the Tenants, as they did not have sufficient notice of the Landlord's amended claim. I find to proceed would be inconsistent with the Act, Rules, and rules of administrative fairness and natural justice.

Accordingly, I find I must dismiss the Landlord's Application wholly without leave to reapply. I Order the Landlord to return the Tenants' **\$1,600.00** security deposit to them as soon as possible. I grant the Tenants a Monetary Order of \$1,600.00 in this regard.

Conclusion

The Landlord is unsuccessful in his Application, as he failed to submit an amendment to his Application pursuant to the Act and Rules, and he failed to serve the Tenants with amended evidence pursuant to the Act and Rules set out above. Further, the Landlord submitted a claim that was for more compensation than is allowed, pursuant to section 58 of the Act.

The Tenants are granted a monetary order of **\$1,600.00** from the Landlord for the return of their security deposit that the Landlord held to apply to his claims.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 16, 2021

Residential Tenancy Branch