



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL, MNDCT, OLC, FFT**

Introduction

This hearing was scheduled to deal with cross applications. The landlord applied for a Monetary Order for damages or loss under the Act, regulations, or tenancy agreement; and, authorization to retain the tenant's security deposit and pet damage deposit. The tenants applied for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement and orders for the landlord to comply with the Act, regulations, or tenancy agreement.

Both parties appeared or were represented at the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural matters

1. Naming of landlord(s)

The Landlord's Application for Dispute Resolution and the Tenant's Application for Dispute Resolution named two different individuals as being the landlord and I explored this matter further. The tenants had named the property manager who was in attendance at the hearing. In completing the Landlord's Application for Dispute Resolution, the property manager had named the owner of the rental unit as the landlord. Both an owner and an agent for the owner, such as their property manager, meet the definition of "landlord" under the Act. With consent, the style of cause reflects both the owner and the property manager as landlords in this decision.

2. Service of Landlord's proceeding package and evidence

The landlord submitted that he sent the proceeding package to the tenant referred to as JA via email within three days of filing on January 22, 2021. JA denied receiving the landlord's proceeding package by email.

The landlord submitted that he sent the proceeding package to the tenant referred to by initials DP by registered mail on January 26, 2021 to her forwarding address. DP testified she did not receive the landlord's proceeding package. Upon review of the registered mail envelope and the tenant's letter providing a forwarding address, I noted that the landlord wrote the wrong postal code on the registered mail envelope. A search of the registered mail tracking number shows the package was delivered but there is no signature of the recipient.

The landlord submitted that he sent his evidence package to JA only, on April 30, 2021, via email. JA confirmed receipt of this email.

Both DP and JA stated that upon review of the landlord's evidence and without receiving the Landlord's Application for Dispute Resolution and Notice of Dispute Resolution Proceeding they were uncertain as to what the landlord was claiming against them and their deposits since they were of the position they left the unit clean and undamaged. The tenants asked me what the landlord was seeking compensation for and the amount. I read from the landlord's Application for Dispute Resolution. However, I also noted that in the landlord's evidence package there are several photographs of the rental unit and it is not obvious from the evidence package only that the landlord's claim against the tenants was actually for unpaid rent for the remainder of the fixed term.

Sending a proceeding package by email prior to March 2021 was not an acceptable method of service and JA denied receiving the emailed proceeding package. Therefore, I find the landlord failed to properly serve JA and I do not deem her sufficiently served since she denied receipt of the proceeding package.

Sending a proceeding package by registered mail to a tenant's forwarding address is an acceptable method of service; however, the landlord misaddressed the registered mail and DP denied receiving it. There is no signature for delivery of the registered mail and I am unable to confirm DP received it. Therefore, I find the landlord did not satisfy me that he adequately served DP with the proceeding package.

As for service of evidence, evidence is to be served upon each respondent. The landlord only sent his evidence to one of the respondents. Further, service by email is only permitted if the person serving has a Substituted Service Order or the recipient has provided an email address for purposes of receiving documents. The landlord did not have a Substituted Service Order and the tenants stated they did not consent to being served documents by email. As such, I find the tenants were not sufficiently served with the landlord's evidence package.

In light of the above, I declined to hear the landlord's claims against the tenants and I dismissed the landlords claims against them with leave to reapply.

3. Service of Tenant's proceeding package and evidence

The tenants submitted that they sent their proceeding package and evidence to the landlord via registered mail at the property manager's service address, as listed on the tenancy agreement. The tenants provided the registered mail tracking number as proof of service. Canada Post shows the package was delivered on March 15, 2021.

The property manager acknowledged receipt of the tenant's registered mail package but claimed it did not include the Notice of Dispute Resolution Proceeding and Application for Dispute Resolution. Nor, did it include a Monetary Order worksheet. Rather, the package included photographs and letters dated October 1, 2020 and November 30, 2020. The property manager stated that he thought the package and the tenant's appearance at the hearing was to respond to his claims against them.

The tenant maintained that the package she sent to the landlord contained their proceeding package and Monetary Order worksheet; however, the tenant acknowledged she had difficulty completing the Monetary Order worksheet so she also provided a spreadsheet outlining their claims. I noted that the Monetary Order worksheet uploaded to the Residential Tenancy Branch was devoid of any amounts. I noted there was a spreadsheet provided by the tenant that was several pages long containing many numbers but lacking description as to what the numbers represented.

Overall, I was unsatisfied the tenant's sufficiently served and set out their claims and I dismissed their claims against the landlord with leave to reapply.

4. Return of security and/or pet damage deposits

Pursuant to section 38 of the Act, a landlord only has 15 days after the tenancy ends, or receiving the tenant's forwarding address in writing, to either refund the deposit, make a claim against the deposit, or get the tenant's consent to make deductions or retain the deposit.

The parties provided consistent evidence to me that the landlord is holding \$1425.00 in deposits, the tenant provided a forwarding address to the landlord in writing, and the landlord did not refund the deposits or obtain the tenant's written consent to retain the deposits. The landlord did make a claim against the deposits; however, I have dismissed the landlord's claims in this decision. Although I have dismissed the landlord's claims against the tenants with leave to reapply, the time limit for making a claim against the tenant's deposits has expired. Accordingly, I order the landlord to return the deposits to the tenants in keeping with Residential Tenancy Policy Guideline 17: *Security Deposit and Set Off* and I provided the tenants with a Monetary Order in the amount of \$1425.00.

Conclusion

The landlord's claims against the tenants are dismissed with leave to reapply.

The tenants' claims against the landlord are dismissed with leave to reapply.

Although I have dismissed the parties' respective claims with leave to reapply, the time limit for making a claim against the tenant's deposits has expired and I provide the tenants with a Monetary Order for the sum of the deposits, in the amount of \$1425.00.

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: June 01, 2021