



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord and her agent/daughter, A.S. attended the hearing via conference call and provided affirmed testimony. The tenant and her co-tenant, W.H. attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on April 20, 2021. The landlord stated that the tenant was also served with the submitted 15 documentary evidence files in the notice of hearing package via Canada Post Registered Mail. The tenant disputes the landlord that only 7 documentary evidence files (5 pictures and 2 invoices) were received with the hearing package. The landlord was unable to provide any supporting evidence of service of all 15 documentary evidence files. Both parties confirmed the tenant served

the landlord with the submitted 171 documentary evidence files via email on October 13, 2021. Neither party raised any other service issues.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and the tenant's submitted documentary evidence as per Section 71 of the Act. On the landlord's 8 disputed documentary evidence files, I find on a balance of probabilities that the tenant was not properly served and as such exclude these 8 files from consideration in this hearing for lack of service. The landlord was unable to provide any supporting evidence regarding service of the disputed evidence files.

During the hearing the landlord's monetary claim was discussed in detail. The landlord confirmed that she did complete a monetary worksheet (RTB-37) but was unable to identify it from her evidence submissions. The tenant stated that no such document was submitted as part of the notice of hearing package or the received documentary evidence. The landlord was asked if there was an alternative listing of her monetary claim listed anywhere in her application. The applicant stated that she was sure that there was, but when asked to identify it, was unable to. At this time the landlord stated that she suffers from a medical condition called "Lime Disease" and was becoming "confused" and "flustered". The landlord was given some time to organize herself and the landlord's agent was requested to assist in moving forward with the application. The landlord's agent stated that she is in a different location and does not have access to any of the evidence. The landlord stated that she did not have any of her evidence before her as she had moved. The landlord requested an adjournment to allow her to properly organize herself and prepare for the hearing and access her files. The tenant disputed the request arguing that they wanted the Arbitration to continue to resolve the dispute.

Rules of Procedure, Adjourning a hearing, Rule 7.8 Adjournment after the dispute resolution hearing begins states in part,

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time. A party or a party's agent may request that a hearing be adjourned. The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

Rule 7.9 Criteria for granting an adjournment, states in part,

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party.

In this case, the landlord has requested an adjournment in order to be allowed to organize and be able to present her monetary claim details. The landlord identified that she suffers from a medical condition called "Lyme Disease" which has caused her to not be prepared for the hearing by "confusing" her and "flustering" her. The landlord stated that she had moved and was not in possession of any of her documentary files for the dispute resolution hearing and as such was not able to identify any of her evidence files. The landlord's agent/daughter stated that she is living at the rental property and does not have access to any of the evidence files. The landlord re-argued that she should be granted an adjournment due to the circumstances. The landlord confirmed her ongoing medical condition well before the application was filed. The tenant has disputed the landlord's request for an adjournment. A review of the Residential Tenancy Branch File shows that the application was filed on April 19, 2021 and the landlord's listed address was confirmed as being the same.

I refer to Residential Tenancy Branch Policy Guideline #36 that speaks to "Extending a Time Period and "exceptional circumstances",

The word "exceptional" means that an ordinary reason for a party for not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure

- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

In this case, the landlord did not have access to her own files concerning the monetary claim and was not able to make submissions or present evidence. I find that the landlord has failed to meet the burden of proving there were exceptional reasons giving rise to their ability to provide monetary details of her monetary claim. Accordingly, the landlord application for an adjournment is denied. I find that to allow an adjournment for the landlord in this circumstance would be highly prejudicial to the tenant. The tenant was present and waiting to respond to the landlord's claim.

I find that the landlord has failed to provide the fundamental monetary details of her application and as such, the landlord's application is dismissed 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: October 25, 2021

Residential Tenancy Branch