



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNR MNSD FF

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 22, 2021. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord's agent attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing. The Landlord's agent stated that each of the Tenants were sent the Notice of Hearing and evidence by registered mail to the forwarding address provided by the Tenants. These packages were mailed on June 7, 2021. The Landlord provided proof of service and mail tracking, showing the packages were signed for by one of the Tenants. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed to have received these documents on June 12, 2021, the fifth day after their mailing.

The Landlord's agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Preliminary Matters**

The Landlord's agent stated that he only became involved in the tenancy after it ended, and once he started assisting the Landlord with the cleanup and the dispute resolution process.

After reviewing the file, I note the Landlord filed her initial application for \$31,350.00 for several monetary items including \$23,500.00 in damages to the unit, plus \$6,300.00 in

unpaid rent, and \$1,450.00 for an insurance deductible (plus \$100.00 for the filing fee). These were the amounts listed on the application, and on the Notice of Dispute Resolution.

Following the Landlord's application, made on May 21, 2021, the Landlord uploaded a monetary order worksheet and an evidence package, to highlight that the amount she is seeking is actually \$32,862.00, plus other rental losses. The Landlord did not file an amendment to update and increase this total, following her initial application. During the hearing, the Landlord's agent explained that the Landlord is owed \$6,300.00 in lost rent, on top of the \$32,862.00, and she would like to request the full amount of the claims limit (\$35,000).

At the time of the hearing, the Landlord's agent was allowed to explain and speak to the items on the worksheet in order to gain clarity on the matters applied for. However, after reviewing the totality of the application, the worksheet, and the testimony, I find the Landlord's application is problematic and not sufficiently clear.

Rental losses aside, I note the Landlord initially filed her application for damage to the unit totalling \$23,500.00. However, subsequent to this, she indicated this amount was \$32,862.00, as per the worksheet provided. I note that, as per the Rules of Procedure, in order to modify or increase a monetary claim, the applicant must file an amendment with our office, and serve this amendment on the other party no later than 14 days before the hearing. This is done so that the other party can be sufficiently put on notice as to the new amount of the claim and what has changed from the initial application and Notice of Dispute Resolution. An application may only be amended at the hearing if the amounts are reasonably foreseeable (unpaid, accrued rent). However, I do not find these amounts sought are such that they may be amended at the hearing.

The Landlord should have filed an amendment to increase and change the amounts sought. However, this was not done. I note that during the hearing, there was a further lack of clarity regarding what amounts were actually paid by the Landlord, and which amounts were covered by insurance, particularly with respect to the flooring (which was the largest item, totalling over \$17,000). Also, the Landlord's agent indicated that not all of the amounts on the monetary worksheet match the receipts and quotes provided (notably item #10 on the worksheet). Not only did the Landlord seek to increase the monetary claim, by many thousands of dollars, without an amendment, but there was a general lack of detail and clarity at the hearing regarding the amount of loss the Landlord suffered, as noted above.

I find the manner in which the Landlord laid out and filed the application, and the amounts was confusing and lacked sufficient clarity. Despite efforts at the hearing, I find there was still a notable lack of clarity on the actual amount of loss, particularly in light of the fact that there were concurrent insurance claims for some, but not all of the damage the Tenants may have caused.

Furthermore, I note the following portion of the Act:

- Section 59                    (2) An application for dispute resolution must
- (a) be in the applicable approved form,
  - (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
  - (c) be accompanied by the fee prescribed in the regulations.
- [...]
- (5) The director may refuse to accept an application for dispute resolution if:
- [...]
- (c) the application does not comply with subsection (2).

As laid out above, I find the Landlord's application did not sufficiently disclose the full particulars of the dispute, and the Landlord's agent attended the hearing to discuss items that were not sufficiently laid out on the actual application. Given the totality of the situation, I dismiss the Landlord's application, in full, with leave.

Should the Landlord choose to reapply, I encourage her to clearly lay out what she is seeking on the initial application, prepare a monetary worksheet (and ensure this amount matches what is applied for), and be prepared to speak to each of the items she is seeking in a clear manner. Should the Landlord choose to re-apply, she is encouraged to present evidence as to what her actual losses were, such as actual receipts, and a clear account of what was covered by insurance, and what was not.

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: November 23, 2021