



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on September 7, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$17,866.00 for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$700.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 63 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 2:33 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent provided his name and spelling. He stated that the landlord named in this application is his mother and he had permission to speak on her behalf. He provided an email address for me to send this decision to the landlord after the hearing.

At the outset of this hearing, I informed the landlord's agent that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord's agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process and potential outcomes and consequences to the landlord's agent. He had an opportunity to ask questions, which I answered. I informed him that I could not provide legal advice to him. He did not make any adjournment or accommodation requests. He confirmed that he was ready to proceed with this hearing.

The landlord's agent stated the following facts. He filed an application for substituted service ("SS application"), to serve the tenant with the landlord's application by way of email to the tenant's work email address. He filed the SS application after filing the landlord's application for dispute resolution because he did not know that he had to file it beforehand. He received the RTB notice of hearing, dated September 17, 2021, and knew that he had to serve the tenant with the application, notice of hearing, and evidence within 3 days of receiving the above documents from the RTB. He only received the SS decision, dated September 24, 2021, on October 4, 2021. He served the above documents to the tenant on October 4, 2021, and again on October 6, 2021, because he forgot to include the tenant's full email address on the proof of email on October 4, 2021. He is aware that he did not serve the tenant within the proper deadlines, but it was because he did not know the correct procedure.

Preliminary Issue – Particulars of Landlord's Application

The landlord's agent confirmed that the landlord seeks a monetary order of \$17,886.00 plus the \$100.00 application filing fee. He said that the tenant owes \$17,800.00 in unpaid rent during this tenancy, which lasted from March 1, 2016 to August 19, 2021. He explained that the landlord did not provide a copy of the parties' written tenancy agreement because she either lost it or threw it out. He claimed that the tenant did not pay rent for many years during this tenancy, but the landlord did not pursue the rent against her until now. He said that he works with the tenant at the same workplace.

The landlord's agent confirmed that he submitted hundreds of pages of documents for this hearing, including photographs of garbage and damages at the rental unit, numerous direct request worksheets, multiple monetary order worksheets, and many text messages, emails, and videos.

I informed the landlord's agent of the following information during this hearing. I found the landlord's documents to be confusing. The landlord did not apply for a direct request ex-parte application but used many direct request worksheets to calculate the rent. Hundreds of pages were uploaded online individually, they were not organized properly, the pages were not numbered, there was no table of contents, and there was a lot of irrelevant evidence that was not related to the landlord's claims for unpaid rent or garbage disposal fees of \$86.00. The landlord's documents were not provided in one package or in a few packages in an organized manner. The landlord's evidence was not properly organized, clear, or legible, as required by the RTB *Rules*.

The following RTB *Rules* state (emphasis in original):

3.6 Evidence must be relevant

All evidence must be relevant to the claim(s) being made in the Application(s) for Dispute Resolution.

The arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to consider evidence that they determine is not relevant.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

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3.13 Applicant evidence provided in single package

Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package.

An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution] or Rule 10 [Expedited Hearings].

During this hearing, I asked the landlord's agent to provide a monetary breakdown of unpaid rent due per month, during this tenancy. I informed him that 3 pages of a 4-page monetary order worksheet submitted by the landlord, indicates "0" for the rent due, referencing multiple direct request worksheets with different rent amounts due. He attempted to provide a breakdown of the rent due, dating back to the year 2018, but was manually calculating the rent during this hearing. He was unable to provide a clear breakdown of the rent due, aside from the total amount, dating back years. He was unable to provide evidence as to whether the landlord waived her right to collect the full rent by continuing to allow the tenant to live at the rental unit for years, without payment of rent.

Pursuant to section 59(2)(b) of the *Act*, an application must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide a tenant with notice and enough information to know the landlord's case so that the tenant can properly respond.

I find that the landlord did not provide sufficient details of this dispute, so that the tenant had notice to respond. I also found that the testimony of the landlord's agent, and the documents submitted by the landlord, regarding this monetary application for \$17,886.00, to be unclear and confusing. I provided the landlord's agent with ample time of 63 minutes during this hearing, in order to provide clear testimony regarding the unpaid rent, but he failed to do so.

I also find that the landlord did not properly serve the tenant with the application documents in a timely manner. The landlord applied for substituted service after filing this application for dispute resolution. The landlord served the tenant with the notice of hearing, dated September 17, 2021, on October 4, 2021, which is beyond the three-day deadline, as per Rule 3.1 of the *RTB Rules*.

I informed the landlord's agent that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee. I notified him that the landlord could file a new application and pay a new filing fee, if she wanted to pursue this matter in the future.

I informed the landlord's agent that the landlord could review the *Act* and the RTB *Rules* on the RTB website, as links are referenced in the landlord's application documents, including fact and information sheets. I notified him that the landlord can hire a lawyer to obtain legal advice, if she wanted to do so. I informed him that the landlord could obtain assistance, including from advocates and agents, with an application and appearing at a future hearing. I notified him that the landlord can contact information officers at the RTB, in order to obtain information only, not legal advice. I informed him that the landlord could contact the Provincial Court of British Columbia, to obtain information regarding enforcement of monetary orders. I cautioned him about service, substituted service, service deadlines, the RTB *Rules* and the *Act*. He confirmed his understanding of same.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed 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 18, 2022

Residential Tenancy Branch