



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDL-S, FFL**

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on March 13, 2022 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- an order to retain the Tenant's security deposit; and
- an order granting recovery of the filing fee.

The Landlords and the Tenant attended the hearing at the appointed date and time. At the start of the hearing the Landlords stated that they served their Notice of Hearing and documentary evidence to the Tenant. The Tenant confirmed receipt of the Notice of Hearing, but not the Landlord's evidence. The Landlords were asked when and how they served their evidence to the Tenant. The Landlords were unsure but stated it was likely served by email. The Tenant denied having received the Landlord's evidence.

### Preliminary Matters

Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

### **According to the Rules of Procedure 2.5 Documents that must be submitted with an Application for Dispute Resolution**

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

### **3.11 Unreasonable delay**

Evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

### **3.17 Consideration of new and relevant evidence**

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5, 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Both parties must have the opportunity to be heard on the question of accepting late evidence.

I find that the Landlords evidence was not served in accordance with Section 88 of the *Act*. I note that the Landlords had applied for substituted service and were denied with their request to serve the Tenant by email. Furthermore, the Landlords were unsure as to when they served their evidence to the Tenant. I note that the Landlords served their evidence to the Residential Tenancy Branch only 13 days before the hearing. I find that the Landlords provided insufficient evidence to demonstrate that they served the Tenant with their evidence within the appropriate time limes.

During the hearing, the Landlords requested to withdraw their Application with the ability to reapply and ensuring that the Tenant is sufficiently served in accordance with the Act and Rule of Procedures. As the Landlords had applied to retain the Tenant's security and pet damage deposits amounting to \$1,500.00, I find that the Tenant is entitled to the full return of their deposits. Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,500.00 which represents the balance of their security and per damage deposits.

Conclusion

The Landlords attended the hearing and requested to withdraw their application with the ability to reapply to serve their evidence to the Tenant in accordance with the Act and Rules of Procedure. The Tenant is granted a monetary order in the amount of \$1,500.00 which represents the return of the Tenant's security and pet damage deposits. The order should be served to the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 29, 2022

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Residential Tenancy Branch