



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On June 14, 2022, the landlords applied for:

- compensation for damage caused by the tenants, their pets, or guests to the unit or property, noting the landlord holds the security or pet deposit;
- compensation for monetary loss or other money owed, noting the landlord holds the security or pet deposit; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

### Preliminary Matters

#### *Claim for damages*

The landlords' application states they seek \$7,588.75 for damages. The application was not amended in accordance with Rule 4.1, but an amendment form and monetary order worksheet were submitted as evidence on February 10, 2023, indicating that the landlord was seeking a new amount of \$11,444.44 for damages.

The landlords were granted an order for substituted service by email in the proceeding noted on the cover page of this decision. The landlords testified they served the amendment documents on the tenants by email. The tenants testified they did not

receive the amendment documents, and the landlord failed to provide proof of their service by email, though I gave the landlord the opportunity to do so during the hearing.

I therefore advised the landlord that as Rule 2.9 provides that an applicant may not divide their claim, their options were to either proceed with the damages claim for \$7,588.75, which had been served on the tenants, or, I would dismiss their application with leave to reapply, permitting them to make a new application against the tenants for \$11,444.44. An example of dividing a claim would be if the landlord had proceeded with their claim for \$7,588.75 in damages, then filed a second damages claim related to the same circumstances, such as for the remaining balance of \$3,855.69.

The landlord indicated they would reapply for the full damages amount sought, and requested the proceeding be adjourned rather than dismissed with leave.

The tenants requested that the claim be dismissed without leave to reapply, submitting that the landlord had an opportunity to provide an amended claim, and that permitting the landlord to reapply would prejudice them, as it would subject them to further mental stress resulting from remaining in contact with the landlord.

Rule 7.9 *Criteria for granting an adjournment* states:

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.

Considering Rule 7.9, I dismiss the landlords' claim with leave to reapply, and decline the landlords' request to adjourn the proceeding as the landlord neglected to submit the necessary proof of service. I also decline the tenants' request to dismiss the claim

without leave to reapply, as I find doing so would significantly prejudice the landlord, much more so than any prejudice to the tenants resulting from dismissal with leave.

*Claim for monetary loss or other money owed*

The landlords' claim for monetary loss or other money owed stated that as the move in of new tenants was delayed, the landlord seeks the subject tenants to compensate the new tenants in the amount of one month's rent.

Per section 6 of the Act, the Residential Tenancy Branch has the jurisdiction to hear a dispute between two parties: a landlord and a tenant. As this portion of the landlords' application is related to the interests of a third party, it is not a matter the Act gives me the authority to adjudicate; I dismiss it without leave to reapply.

Conclusion

The portion of the landlords' application relating to damage to the rental unit is dismissed with leave to reapply.

The portion of the landlords' application relating to compensation for the landlords' new tenants 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: April 04, 2023

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Residential Tenancy Branch