



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDL-S, MNRL-S, MNDCL-S, MNSDS-DR, FFT, FFL

### **Introduction**

A hearing was convened on November 16, 2023 in response to cross applications.

The landlord filed an Application for Dispute Resolution, in which the landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The tenant filed an Application for Dispute Resolution, in which the tenant applied to retain the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

There was insufficient time to conclude the hearing on November 16, 2023, so that hearing was adjourned. The hearing was reconvened on February 26, 2024. For reasons outlined in my interim decision of February 27, 2024, the second hearing was also adjourned. The hearing was reconvened on March 15, 2024, and was concluded on that date.

MM stated that on May 08, 2023, the landlord's Application for Dispute Resolution and Dispute Resolution Package was served to each tenant named on the Application for Dispute Resolution. The tenant acknowledged receipt of these documents and I find they were served in accordance with section 89(1) of the *Residential Tenancy Act* (Act).

MA stated that on October 28, 2023, the tenant's Application for Dispute Resolution Dispute Resolution Package was served to the landlord. The landlord acknowledged receipt of these documents and I find they were served in accordance with section 89(1) of the Act.

On May 03, 2023, the landlord submitted evidence to the Residential Tenancy Branch. MM stated that this evidence was served to the tenant with the Dispute Resolution Package on May 08, 2023. The tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On May 13, 2023, the tenant submitted evidence to the Residential Tenancy Branch. AD stated that this evidence was served to the landlord, although she cannot recall the date of service. The landlord does not acknowledge receiving this evidence. As the tenant has submitted insufficient evidence to establish this evidence was served to the landlord, it was not accepted as evidence for these proceedings.

On October 17, 2023, the tenant submitted evidence to the Residential Tenancy Branch. MA stated that this evidence was personally served to the landlord on October 17, 2023. HL acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On October 30, 2023, the tenant submitted evidence to the Residential Tenancy Branch. MA stated that this evidence was served to the landlord, via registered mail, on October 28, 2023. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On November 03, 2023, the tenant submitted additional evidence to the Residential Tenancy Branch in support of the tenant's Application for Dispute Resolution. The deadline for serving evidence in response to the landlord's Application for Dispute Resolution was November 08, 2023. MA stated that this evidence was served to the landlord, via registered mail, on November 03, 2023. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On November 12, 2023, the landlord submitted additional evidence to the Residential Tenancy Branch in support of the landlord's Application for Dispute Resolution. MM stated that this evidence was served to the tenant, via registered mail, on November 10, 2023. MM stated that the evidence was also emailed to the tenant on November 10,

2023. The deadline for serving of landlord's evidence in support of the landlord's Application for Dispute Resolution was November 01, 2023.

HL stated that the landlord's evidence package was not served "on time" because it was a difficult file.

AD stated that on November 15, 2023, the tenant received the delivery notice for the documents mailed on November 10, 2023. AD stated that when the tenant attempted to pick up these documents from Canada Post, they were not yet available to be picked up.

MA stated that the documents emailed on November 10, 2023 were not viewed until November 14, 2023. MA submits that the evidence package that was sent on November 10, 2023 was unreasonably delayed and should not be accepted. MM submits that the landlord's evidence package should be accepted because the tenant has submitted a fulsome response.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure require an applicant to submit copies of all evidence to be relied upon at the proceeding with the Application for Dispute Resolution to the Residential Tenancy Branch, subject to rule 3.17. It is clear the landlord did not comply with this requirement, as the Application was filed on April 28, 2023 and the landlord did not submit the bulk of the landlord's evidence to the Residential Tenancy Branch until November 12, 2023.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence not submitted at the time of Application for Dispute Resolution that is intended to be relied on at the hearing must be received by the Respondent and the Residential Tenancy Branch not less than 14 days before the hearing. In the event that a piece of evidence is not available when an applicant submits and serves their evidence, the arbitrator will apply Rule 3.17. As previously stated, the deadline for the submitting/serving the landlord's evidence in support of the landlord's Application for Dispute Resolution was November 01, 2023.

As the landlord did not send the evidence package of November 12, 2023 to the tenant until November 10, 2023 and it was not received by the tenant until November 14, 2023, I find the evidence was not received by the tenant in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure.

Where late evidence is submitted to the Residential Tenancy Branch and served to the other party, I must apply rule 3.17 of the Rules. Rule 3.17 sets out, in part, that I may admit late evidence if it is new and relevant evidence and that it was not available at the time the Application for Dispute Resolution was filed. It is clear that much of the evidence submitted by the landlord on November 12, 2023 was available when the landlord filed the Application for Dispute Resolution. Clearly any evidence that was not available when the Application was filed, was available well before it was sent to the tenant on November 10, 2023.

Rule 3.17 sets out, in part, that I may admit late evidence if it does not unreasonably prejudice one party or result in a breach of the principles of natural justice. In this case the tenant did not have the opportunity to review the late evidence submitted by the landlord until 2 days before the hearing on November 16, 2023. Given the sheer volume of this evidence package, I find the admission of this evidence would be prejudicial to the tenant.

HL's testimony is that the landlord's evidence package was not served "on time" because it was a difficult file. I find that if the issues were too complicated for the landlord to prepare the evidence in a timely manner, leaving the tenant two days to respond to that evidence is highly unfair.

Residential Tenancy Branch records show that there was a previous dispute resolution proceeding on September 29, 2022. The file number for this matter appears on the second page of this decision. These proceedings related to the landlord's application for compensation for damage to the unit and to retain the security deposit. The records show that the landlord withdrew that application because the cost of the repairs had not yet been determined. Given that the landlord had already withdrawn one Application for Dispute Resolution for damage to the rental unit because they were ill prepared, I find the landlord should have been at least reasonably prepared prior to filing this second Application for Dispute Resolution.

I respectfully disagree with the tenant's submission that the landlord's late evidence should be accepted because the tenant has submitted a fulsome response. A party to a dispute resolution hearing is entitled to know the case against them and must have a proper opportunity to respond to that case. A respondent must have the opportunity to view the evidence to be considered and it is not sufficient to argue that a respondent successfully anticipated the nature of the evidence.

For these reasons, I exercise my discretion to exclude the evidence package that the landlord submitted to the Residential Tenancy Branch on November 12, 2023.

On November 15, 2023 the tenant submitted additional evidence to the Residential Tenancy Branch in support of the tenant's Application for Dispute Resolution. MA stated that this evidence was not served to the landlord. As the evidence was not served to the landlord, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party, with the exception of legal counsel, affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of legal counsel, affirmed they would not record any portion of these proceedings.

#### Preliminary Matter

MA stated that these claims were the subject of a previous dispute resolution proceeding, the number of which appears on the second page of this decision. MA submits that the landlord withdrew that Application for Dispute Resolution as the landlord had not submitted evidence in support of that Application.

Residential Tenancy Branch records show that there was a previous dispute resolution proceeding on September 29, 2022. These proceedings related to the landlord's application for compensation for damage to the unit and to retain the security deposit. The records show that the landlord withdrew that application because the cost of the repairs had not yet been determined. The landlord's claim for compensation was dismissed, with leave to reapply. As those claims were dismissed with leave to reapply, the landlord is not precluded from filing another Application for Dispute Resolution for damage to the unit.

Section 62(4)(c) of the Act allows me to dismiss all or part of an Application for Dispute Resolution if the application or part is frivolous or an abuse of the dispute resolution process. Although I accept that the landlord may not have been fully prepared when the previous Application for Dispute Resolution was filed and the landlord may have been ill

prepared when the landlord filed the current Application for Dispute Resolution, I cannot conclude that the Application for Dispute Resolution is frivolous or an abuse of process. I therefore will not be dismissing the Landlord's Application for Dispute Resolution pursuant to section 62(4)(c) of the Act.

#### Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Is the tenant entitled to the return of double the security deposit?

#### Background and Evidence

After discussing many of the terms of the tenancy agreement and the many of the claims being made by the parties, the parties mutually agreed to settle all issues in dispute at these proceedings under the following terms:

- The landlord will retain the tenant's security deposit
- Neither party will pay money to the other party
- This settlement agreement resolves all issues related to this tenancy.

This agreement was summarized for the parties on at least two occasions. HL, AD, and SM each clearly indicated they agreed to resolve this dispute under these terms.

HL, AD, and SM each acknowledged that they understood they were not required to enter into this agreement and that they understood the agreement was final and legally binding.

As the parties were able to reach a settlement agreement, the matters discussed at the hearing are not being recorded here.

#### Analysis

All issues at these proceedings have been settled in accordance with the aforementioned terms.

Conclusion

Base on the settlement agreement reached at this hearing, the landlord is entitled to retain the tenant's security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 16, 2024

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Residential Tenancy Branch