# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF, O

Introduction

This hearing was scheduled to deal with cross applications. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, and to respond to the submissions of the other party, pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, the parties were trying to speak over one another and myself. The parties were informed of the conduct expected of them during the hearing and strongly cautioned that failure to comply with my instructions to refrain from interrupting the other party or myself or use of antagonistic or inflammatory comments, may result in consequences including dismissal of their Application. The tenant complied with my instructions; however, the landlord did not, as described below

**Tenants' Application**
The tenants originally filed an Application for Dispute Resolution seeking return of the security deposit and pet damage deposit of $1,075.00. The tenants then filed an amended Application seeking compensation of $645.00 for loss of use of a portion of the rented premises. The landlord testified that she found the amended Application posted to the door of her residence more than three days after the tenant's filed their Application. The landlord also indicated that it was unclear to her as to the remedies sought by the tenants by way of the Application posted on her door. The tenant in attendance at the hearing was unable to provide the date the Application was posted on the landlord's door as this had been done by his wife. The tenant indicated that intended to pursue the claim of $1,075.00. I noted that this amount is that which appears on the originally-filed Application and I was not provided sufficient evidence that the original application was served upon the landlord.

Section 89 of the Act determines the method of service for documents related to a dispute resolution proceeding. Where a party applies for a Monetary Order, the Application for Dispute Resolution must be served upon the respondent personally or by registered mail. Posting an Application for Dispute Resolution on the door of the respondent's residence is insufficient service for a monetary claim.

Furthermore, the Application for Dispute Resolution must be accompanied by sufficient particulars so that the respondent may understand the nature of the claim against them and respond to the claims.

Given the tenants' Application for Dispute Resolution was not served upon the landlord in a manner that comply with the Act, and the uncertainty as to the nature of the tenants' claims against the landlord, I determined it appropriate to not proceed with the tenants' Application and dismiss it with leave to reapply.

The landlord objected to dismissal of the tenants' Application for Dispute Resolution. I asked whether she wanted to proceed with the tenants' Application to which she responded that she wanted to make that decision only after her Application was heard. I informed the parties that the time to determine whether the tenant's Application would proceed was before me, as a preliminary matter. I asked the landlord to clarify her position with respect to the dealing with the tenant's Application to which she responded "do what you want then".

The tenants' Application has been dismissed with leave to reapply.

**Landlords' Application**

The landlord had applied for monetary compensation against the tenants for damage to the unit or property; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the tenant's security deposit and pet damage deposit.

The landlord submitted that she served the tenants with her Application for Dispute Resolution by way of registered mail. The landlord testified that she obtained the tenant's forwarding address upon receipt of the tenant's Application for Dispute Resolution.

The landlord claimed that she sent her evidence package to the tenants via Xpresspost on May 16, 2014. The tenant confirmed receiving an evidence package from the landlord in their mailbox approximately 10 days before the hearing date. However, the tenant described how the evidence included photocopies of photographs and most appeared to be grey and black which were difficult to determine what was depicted in the images. I noted that the photographs served upon the Branch were original colour photographs of good quality.

The landlord submitted that she served all of her evidence package upon the Branch by delivering it to a ServiceBC office on May 20, 2014. I noted that the photographs and a DVD that were before me had been received at the Branch from the ServiceBC office on May 23, 2014.

I informed the landlord that the requirement to serve evidence that is available at the time of filing with the Application for Dispute Resolution, as provided in the Rules of Procedure, so that the other party has sufficient opportunity to review and prepare and/or gather evidence in

response. Again, the landlord interrupted me and argued she served her evidence within the deadlines established under the Rules of Procedure.

I accepted the photographs and DVD into evidence as the tenant confirmed receipt of this evidence approximately 10 days before the hearing. However, considering the discrepancy in the quality of the photographic evidence, I advised the tenant to bring to my attention any photographs to which the landlord pointed to during her testimony that he could not clearly view.

As the hearing progressed, I noted that the landlord had referred to documents that were not before me. I further explored the issue of service of the landlord's evidence package. Both the landlord and tenant were provided the opportunity to describe the content of the documentation the landlord claims was served upon the tenants and the documentation the tenant claimed was received from the landlord. There were several documents the landlord described in her evidence package that the tenant stated were not before him. The landlord was adamant that she sent a complete package to the tenants.

I contemplated adjourning the proceeding so as to permit the landlord an opportunity to re-serve all her evidence upon the tenants and myself. The landlord objected to adjournment of the proceedings and requested that I go find the evidence that was served upon the Branch. I informed the landlord that this would be not be possible during the hearing and noted that this would not resolve the issue of evidence not served upon the tenants.

Given the landlord's argumentative and inflammatory comments and the landlord's inability to comply with my instructions to not interrupt, I found it not possible to continue with the hearing and I dismissed the landlord's Application with leave to reapply.

It is important to note that dismissing the landlord's Application with leave does not extend any time limits provided under the Act.

The landlord is at liberty to file another Application but is encouraged to familiarize herself with the following Rule of Procedure prior to participating in another hearing:

**8.7 Interruptions and inappropriate behaviour at the dispute resolution proceeding**

> Disrupting the other party's presentation with questions or comments will not be permitted. The arbitrator may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution proceeding and the arbitrator may proceed with the dispute resolution proceeding in the absence of the excluded party.

Although Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off* provides that an Arbitrator will order return of the deposits if the landlord's claims against the deposits is dismissed, based upon the limited evidence presented to me, I noted there was is a possibility of extinguishment of the tenants' right to return of the security deposit. However, if there was not extinguishment by the tenants, the landlord remains obligated to administer the security deposit and pet damage deposit in a manner that complies with section 38 of the Act.

As I was presented evidence the landlord did not receive the tenant's forwarding address prior to receiving the tenants' Application for Dispute Resolution the landlord is put on notice by way of this decision that the landlord now has the tenants' forwarding address and must deal with the deposits pursuant to section 38 of the Act. The Landlord shall be deemed to have received this decision and receipt of the tenant's forwarding address five (5) days after the date of this decision. As such, the requirement to refund the deposits or file against the deposits within 15 days from that date, as required under section 38, may apply.

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: May 29, 2014

Residential Tenancy Branch