



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNDC & RP

Introduction

This hearing was to deal with an application by the tenant seeking Orders that the landlord complete repairs to the rental unit and site and for damage or loss suffered under the tenancy agreement and *Act*.

Preliminary Issues:

I dealt with three preliminary issues between the tenant's representative and the landlord's representative while waiting for the tenant to appear. The three issues were:

1. The tenant's submission of late evidence;
2. The tenant's request for an adjournment made on May 15, 2009; and
3. The tenant's request to summon witnesses made on May 15, 2009.

The *Residential Tenancy Branch Rules of Procedure* sets out the requirements for participant's to a dispute to address the above three issues. Rule 3.5 states that any evidence which a party wishes to rely upon must be served to the other party and the *Residential Tenancy Branch* at least five (5) full business days before the scheduled hearing date.

Rule 11.5 (b) states that:

The Dispute Resolution Officer may refuse to accept the evidence if the Dispute Resolution Officer determines that there has been a wilful or recurring failure to comply with the *Act* or the *Rules of Procedure*, or, if for some other reason, the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.

In the circumstances before me I was willing to accept the tenant's late evidence as the landlord had received a copy and would have been provided the opportunity to respond to the evidence in the hearing. I was also prepared to grant the landlord a further opportunity to make written submissions in response to the tenant's late evidence.

Rule 6 of the *Rules of Procedure* require that a scheduled dispute resolution hearing will be rescheduled if the Branch receives written consent from both parties agreeing to the re-scheduling of the hearing before noon at least three (3) business days before the scheduled hearing. If a party cannot obtain the written consent from the other party, they may request an adjournment in writing by providing the request with reasons at least three (3) business days before the hearing. The party must provide reasons

setting out the circumstances that are beyond their control that will prevent them from attending.

Rule 6.3 does grant a Dispute Resolution Officer the authority at any time during the process to grant an adjournment. Rule 6.4 sets out criteria that a Dispute Resolution Officer may consider in granting or rejecting a request to adjourn a hearing. The criteria are as follows:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

The tenant's request for an adjournment was not provided to the Branch until the late afternoon on May 15, 2009, less than one business day before the scheduled hearing. The reason for the tenant's request was based on the tenant's attempt to secure witnesses for the hearing and was accompanied by the tenant's request that I summon witnesses pursuant to section 76 of the *Act* and Rule 7 of the *Rules of Procedure*.

The landlord argued that the tenant's actions and requests were prejudicial to the landlord. The tenant initiated the application and had approximately two months to prepare. The tenant failed to submit evidence in time as required and without any notice, was seeking to summon witnesses and an adjournment without providing the landlord with any reasons. I note that the tenant's representative indicated that the landlord should have received both the cover letter and the attached reasons; however, the landlord's agent stated that he only received the cover letter dated May 15, 2009.

The tenant submitted that the summons were required to help demonstrate that the landlord was responsible for the lack of maintenance and without the opportunity to summon witnesses the tenant's application would be disadvantaged.

I carefully considered the submissions of both parties. I denied the tenant's request to summon witnesses and denied the tenant's request for an adjournment. The tenant has failed to diligently pursue this application or meet the minimum requirements of the *Rules of Procedure* in the submission of her evidence and related to the requests for an adjournment and summoning of witnesses. I agree with the submissions of the landlord's representative that the tenant has had ample time to prepare for this proceeding and has failed to make any of these requests in a reasonable timeframe as required by the *Rules of Procedure*. The request was not provided to me until late in the

afternoon, less than one business day before the scheduled hearing and is prejudicial to the landlord who was prepared to go forward with the proceeding at the scheduled time. I am also not satisfied that the absence of witnesses is detrimental to the tenant's application. Both parties have provided evidence from the individuals who the tenant wishes to summon and it was not clear to me that the absence of their oral testimony would be prejudicial to the tenant's case. Finally, the tenant failed to appear for this application and has again failed to diligently pursue this application.

The principals of natural justice require that the applicant take reasonable steps to inform the landlord of the case being made and a fair opportunity to respond to that case. The *Rules of Procedure* are in place to ensure that these principals are protected and I find that to allow the tenant's requests for an adjournment and summoning of witnesses would be prejudicial to the landlord. For these reasons, I deny the tenant's requests.

The hearing was scheduled to be heard by telephone conference call at 9:00 a.m. on May 19, 2009. The tenant's representative appeared and the landlord's agent appeared at the scheduled time; however, by 9:15 a.m., the tenant had not appeared. I was willing to proceed with the hearing based on the late documentary evidence provided by the tenant however, the tenant's representative was not willing to proceed with the hearing in the tenant's absence and withdrew the application.

Conclusion

As the landlord's agent appeared to defend against the tenant's application and the tenant failed to pursue the application, I dismiss the tenant's application without leave to re-apply.

Dated May 20, 2009.

Dispute Resolution Officer