



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNSD, MNDC, RR, & FF

Introduction

This hearing was to deal with the tenants' application seeking compensation due to their allegation that the landlord failed to complete repairs to the rental unit. As a result the tenants brought forward this application seeking compensation based on the rent being reduced by \$400.00 per month during the term of the tenancy agreement. The tenants also sought to have their security deposits returned.

The hearing was scheduled to be heard on this date at 1:00 p.m. by conference call. The landlord appeared for the hearing and was ready to proceed; however, the tenants never appeared.

The landlord confirmed that he was served with notice of the tenants' Application for Dispute Resolution and Notice of the Hearing but was not served with any other evidence or documentation. The landlord served both the tenants and the *Residential Tenancy Branch* (the Branch) with documentary evidence.

Background

On July 13, 2009 the tenants submitted seven pages of evidence to the Branch contrary to rule 3.5 of the *Dispute Resolution Proceedings Rules of Procedure* which states:

3.5 Evidence not filed with the Application for Dispute Resolution

- a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.
- b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.

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c) If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

When questioned, the landlord denied being served with a copy of these documents. On the first page of these seven pages, the tenants copied an e-mail sent to an undisclosed recipient. The e-mail contained the following text:

"With regards the telephone conference call scheduled for July 15, 2009 at 1 PM, we could like to ask for an adjournment or postponement of this call to a future time. The reasons include a surgery scheduled for July 15. However should this not be possible I have responded to [name omitted] evidence package dated July 7, 2009 and specifically to his email sent to [name omitted] on April 13, 2009. I will include a copy of this email as I am addressing his points directly and have them numbered..."

[Reproduced as Written, except where names have been omitted]

Preliminary Issues:

Should the tenants' request for an adjournment be granted?

Analysis

Despite the tenants' failure to provide a copy of the documentary evidence submitted to the Branch on July 13, 2009 to the landlord, I have considered their request for an adjournment and I deny their request for the following reasons.

Based on the evidence before me I find that the tenants have failed to follow the requirements for requesting or seeking an adjournment as required by the *Dispute Resolution Proceedings Rules of Procedure*, rules 6.1 to 6.6.

The tenants began these proceedings and received the Notice of Hearing documents as of April 15, 2009, scheduling the hearing for July 15, 2009 at 1:00 p.m., three months in advance. The tenants had ample opportunity in that time to request that the hearing be rescheduled once they were aware of a conflict. The tenants did not provide any evidence in their request to demonstrate that their absence was due to an emergency but only state that the reasons for the adjournment include "...a surgery scheduled for July 15." The explanation provided in the request for an adjournment also does not

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explain why one of the two tenants, who are both applicants in this proceeding, could not attend in the absence of the other. The tenants also failed to appear or appoint an agent to appear on their behalf to request an adjournment.

I find that the tenants have failed to pursue their request for an adjournment in a diligent manner and their absence and failure to appear at this proceeding is highly prejudicial and unfair to the landlord.

Conclusion

I have denied the tenants' request for an adjournment. As the tenants, the applicants to this proceeding, have failed to appear and proceed with their application for Dispute Resolution and the respondent did appear ready to proceed, I dismiss the tenants' application without leave to re-apply.

Dated: July 16, 2009.

Dispute Resolution Officer