



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNR, MNDC, OLC, ERP, RP, PSF, LRE, & FF

Introduction

This hearing was to deal with an application made by the tenant seeking compensation due to emergency repairs completed and compensation due to loss experienced due to a breach of the tenancy agreement or *Act* by the landlords. The tenant also sought orders that the landlord comply with the *Act*, complete necessary repairs to the rental unit, provide services or facilities required by law and suspend or set conditions on the landlords' right to enter the rental unit.

Preliminary Issue:

The tenant acknowledged in the hearing that no evidence or particulars were served to the landlords or the *Residential Tenancy Branch* to support the tenants' claim until the date of this hearing. The tenant acknowledged that she did not comply with the *Dispute Resolution Rules of Procedures* which require that:

3.4 Evidence to be filed with the Application for Dispute Resolution

To the extent possible, the applicant must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

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 in 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.
- 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



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

Both the parties were in agreement to have the hearing dismissed with leave to allow the tenant the opportunity to make a new application and properly serve the landlords with particulars to the application.

Issues(s) to be Decided

Should this application be dismissed with leave to re-apply?

Analysis

Section 11.5 and 11.6 of the *Dispute Resolution Rules of Procedure* allow for the acceptance of late evidence or decline the acceptance of the late evidence. Generally, the rules allow for an application for dispute resolution to be adjourned to allow the opportunity for the other party to be served and adequately respond to the evidence provided by the applicant.

In the circumstances before me the tenant did not provide any evidence until the day of the hearing. This provided the landlords with no opportunity to respond or gather evidence in response. However, the landlords submitted that they were not opposed to the application being dismissed with leave for the tenant to reapply.

I am satisfied that since no evidence or particulars have been received it is appropriate to dismiss this application with the liberty to re-apply.

Conclusion

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*.

The tenant's application is dismissed with leave to re-apply. The tenant's request to recover the filing fee paid for this application from the landlord is denied. The tenant did not pursue this application diligently and therefore must bear the cost of this application.

Dated: August 14, 2009.

Dispute Resolution Officer