



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant seeking a Monetary Order for money owed or compensation for damage or loss under the Act and to recover the filing fee from the Landlord.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

Preliminary Issues:

When queried as to why she submitted no evidence, the Tenant made a request for an adjournment at the start of the dispute resolution hearing. The Tenant stated that she misunderstood the dispute resolution process and did not realize she was required to provide evidence at least 5 days prior to the hearing. The Tenant stated that she realized her mistake when she received evidence from the Landlord by email a few days before the hearing.

Rule 3.1 states that an applicant, the Tenant in this case, to a dispute resolution hearing must provide a copy of the following to the respondent, the Landlord in this case:

- the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- the details of any monetary claim being made, and
- ***any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.***

[emphasis added]

The Tenant provided the Landlord only with a copy of the application, containing an outline of the monetary claim being made, and the dispute resolution proceeding information package, including the notice of hearing. No particulars of the Tenant's monetary claim were ever provided to the Respondent or the Residential Tenancy Branch.

The Landlord did submit evidence; however, it was also submitted outside of the time frame provided by 4.1 of the rules of procedure.

In considering the Tenant's request for an adjournment, I am guided by rule 6 which provides that a dispute resolution hearing may be adjourned three days prior to the scheduled hearing if the consent of the other party is given. In the event that the other party does not consent to an adjournment, a party may request an adjournment by disclosing the circumstances beyond their control necessitating the adjournment.

In assessing whether an adjournment request should be granted the following criteria can be considered pursuant to rule 6.4:

- 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];
- 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;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I have denied the Tenant's request for an adjournment of this hearing. I find that the need for the adjournment rises due to the Tenant's failure to diligently pursue her claim. The Tenant filed her application on or about September 20, 2010, but then claimed she has been unable to submit evidence due to a car accident in November. The Tenant did not submit proof of the car accident or her physical incapacity. By these actions, the Tenant left the Landlord with no means to reasonably respond to the claim being made against him. The Tenant had multiple options available to her prior to the hearing to delay, withdraw or cancel this proceeding.

The Tenant's failure to diligently pursue this application and failure to provide the Landlord with a reasonable means to respond to this claim are highly prejudicial to the

Landlord and fly in the face of natural justice or administrative fairness. Therefore, I denied the Tenant's request for an adjournment. I proceeded with this hearing solely on the oral testimony of the parties as I also did not accept the late evidence submissions from the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation under section 67 of the *Residential Tenancy Act* and to recover the filing fee?

Background and Evidence

I heard testimony that this tenancy ended on or about May 31, 2010, with a monthly rent of \$1,000.00 or \$1,200.00.

The Tenant is seeking a monetary order for \$23,743.29 for the following:

Est. compensation for house sitter	\$1,340.00
Est. compensation for Damage and Repairs to the ste.	790.00
Est. compensation for Damaged or Destroyed items	654.00
Est. compensation for Restoration time and labour	908.30
Est. compensation for pain, suffering and admin.	5,859.87
Est. compensation for temperature infractions	549.95
Est. cost of cleaning	1,580.00
Est. compensation for health and well-being	4,000.00
Est. rent reduction due to noise and visuals	7,451.40
Toxicity research	80.00
Est. replacement cost for contents of tool junk drawer	200.00
Est. cost and time to replace broom and dustpan	29.77
Withheld from damage deposit	200.00
Filing fee	100.00
TOTAL	\$23,743.20

I heard testimony from the Tenant that she sold the home containing the rental unit to the Landlord in or about November 2008, at which point the Landlord began immediate renovations, including jacking up the house by a foot.

I heard testimony from the Tenant that during her three months in Nicaragua she had either a house sitter or tenant stay in the rental unit to look after the place and that the house sitter endured long periods of not having heat in the rental unit, at one point having the furnace removed.

I heard testimony from the Tenant that while she was away, the Landlord entered her rental unit without permission and caused damage to her property and leaving her clothes and belongings in the middle of the closet.

I heard testimony from the Tenant that she suffered health problems, including migraines, due to the construction and floor sanding, which caused her to abandon the rental unit for periods of time.

I heard testimony from the Landlord acknowledging that some of the renovations caused the Tenant inconvenience, for which she was compensated by a 50% rent reduction and an offer to pay for a hotel stay with proof of the stay. The Landlord stated that the Tenant has never supplied him with any receipts.

I heard testimony from the Landlord that he did not enter the rental unit without permission, that he did not damage the suite, and that he did not leave the suite dusty or dirty as it was cleaned on a daily basis.

I heard testimony from the Landlord that he did not jack up the house at all and that he did not remove the furnace.

I heard testimony from the Landlord, disputing all aspects of the Tenant's testimony.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss, in this case the Tenant, has the burden of proof to establish their claim on the civil standard, as follows:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to

repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the Tenant failed to provide any documentary evidence. The only evidence before me is the disputed oral testimony of the Tenant and the Landlord.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of “facts” is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

I therefore find that the Tenant has failed to submit evidence to establish a monetary claim against the Landlord and I **dismiss** the Tenant’s application without leave to re-apply.

Conclusion

The Tenant’s application is dismissed without leave to re-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: January 19, 2011.

Residential Tenancy Branch