



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Landlord for compensation of \$25,000.00 for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant on October 5, 2011 by registered mail with the application and notice of hearing (the "hearing package"). The Landlord provided a Canada Post registered mail receipt, however the results of an online tracking system search are not clear in that they refer to the documents having been received by a recipient bearing the surname of *both* the Landlord and Tenant. The Landlord said the documents were not returned to her. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package and the hearing proceeded in the Tenant's absence. The Landlord did not file or serve any documentary evidence on the Tenant or the Residential Tenancy Branch.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on or about September 2009 as a one year fixed term tenancy and continued thereafter on a month-to-month basis. Rent is \$2,350.00 per month payable in advance on the 1st day of each month. There have been a number of previous Dispute Resolution proceedings involving these parties as follows:

- The Tenant's application to cancel a 2 Month Notice and for compensation for a loss of quiet enjoyment was heard on May 2, 2011 and in a decision dated May 16, 2011 the Tenant's application was granted. The Landlord did not attend that hearing;
- The Tenant's application to cancel a 2 Month Notice and for compensation was heard on June 29, 2011 and in a decision dated July 10, 2011 the Tenant's application to cancel the Notice was granted however his application to recover an overpayment of rent pursuant to an alleged illegal rent increase was dismissed. The Landlord attended this hearing;

- The Tenant's application to cancel a 2 Month Notice and for compensation for a loss of quiet enjoyment was heard on August 31, 2011 and in a decision dated September 6, 2011 the Tenant's application was granted. The Landlord did not attend this hearing.

The Landlord argued that in all of the previous proceedings she was never served with the Tenant's hearing documents at the address where she resides. The Landlord admitted that she applied for a review of the first decision (based in part on the ground she had not been served) however her application was dismissed. The Landlord claimed that she did not discover until the second hearing that the Tenant was making false allegations against her.

Many of the facts relating to the tenancy history are set out in detail in the decision dated July 10, 2011 and for that reason, I will not reproduce them in detail again here. In short, the Landlord argued that the Tenant has used deceit throughout the tenancy and provided false information at previous dispute resolution hearings in order to obtain compensation awards which were then deducted from his rent. The Landlord also argued that she has at all relevant times since April 2011 had a genuine intention to use the rental unit as her residence but the Tenant has given false evidence about her motives for issuing three, 2 Month Notices and as a result she has been unable to move into her own property.

The Landlord said that as a result of the Tenant's actions, she incurred rent or accommodation expenses of \$2,000.00 for each of May, June, July and August 2011. The Landlord argued that if she was able to reside in the rental unit she would only have a \$1,000.00 mortgage expense. The Landlord also claimed that she incurred travel expenses of \$2,000.00 to travel on two separate occasions from Toronto to Vancouver because the Tenant was not responding to her, because she was unable to get clear information as to why she was unsuccessful at Dispute Resolution hearings and had no one locally who could assist her with these matters. The Landlord further claimed that as a result of the stress these matters put on her, she had to seek the assistance of a therapist. The Tenant argued that the increasing stress placed on her of dealing with the Tenant caused her to lose a child she was carrying in October 2011. The Landlord said she has recently been diagnosed with depression which is the result of dealing with the stress over a prolonged period of time. Consequently, the Landlord sought \$15,000.00 for "mental stress" and "health deterioration."

Analysis

Section 67 of the Act says that "if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party."

I find that there are no grounds to compensate the Landlord for her accommodation costs for May to August 2011 because there is no evidence that the Tenant breached the Act, regulations or tenancy agreement by failing to give possession of the rental unit to the Landlord during that period of time. The Landlord served the Tenant with three 2 Month Notices to End Tenancy and the Tenant's successive applications to cancel each of were successful. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

I also find that there is insufficient compensate the Landlord for travelling expenses and mental stress. Firstly, I find that there is no connection between the Tenant's alleged behaviour and the expenses or damages sought by the Landlord. In particular, I find that there is little evidence to conclude that the Tenant was acting deceptively and gave false information at previous dispute resolution hearings. The Dispute Resolution Officers each issued written decisions giving their findings based on the evidence before them. If the Landlord disputed those findings, then her remedy was to apply for a Judicial Review of those decisions which she did not do. Secondly, I find that the Landlord has provided no evidence (such as receipts) to support her claim for airfare nor has she provided any medical evidence to support her suggestion that the loss of her child was causally connected to an act of the Tenant's arising out of the tenancy.

The Landlord sought permission to submit evidence after the hearing concluded, some of which she claimed she already had in her possession but had not submitted because she was grieving over the loss of her child. The Tenant said she could try to get other evidence such as medical records or a medical opinion. I did not grant the Landlord's application to submit late evidence because I find that she has not provided sufficient reason for delaying in submitting evidence. RTB Rule of Procedure #3 requires an Applicant to file any evidence upon which they intend to rely at the same time as they file their application for dispute resolution. The same Rule also permits an Applicant to file responding evidence at a later date but no later than 2 days prior to the date set for the hearing. The Landlord filed her application for dispute resolution on October 5, 2011 and therefore I find that she (or an agent acting on her behalf) had 2½ months to submit any evidence to the Residential Tenancy Branch and the Respondent. I find that it would be a breach of fundamental justice to allow the Landlord to submit evidence after the hearing (some of which apparently is not yet in existence) without the Tenant having the ability to respond to it.

The Landlord argued that if she was not permitted to file evidence late, she would reapply for the relief she sought in this hearing. However, once a final decision has been issued on the merits of the Landlord's application in this matter, the Landlord will be barred by the principle, *res judicata* from reapplying for the same relief.

Conclusion

The Landlord's application is dismissed without leave to reapply. 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: December 19, 2011.

Residential Tenancy Branch