



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord applied to keep a portion of the security deposit and to recover the filing fee for the Application.

The Tenant applied for return of double his security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the outset of the hearing the Tenant objected to the Landlord's Application for Dispute Resolution, testifying he did not receive a copy of the second page of the Landlord's Application. The second page of the Landlord's Application sets out the particulars of the claim against the Tenant. The Tenant testified he did not know what the Landlord was claiming for, although he acknowledged receiving emails from the Landlord explaining their Application, the amounts they were claiming and that the claim regarded carpet cleaning at the rental unit and the recovery of the filing fee for the Application.

I examined the hearing package of the Tenant, which had been delivered to the Tenant by the Landlord. The package appeared to be intact and there were no additional staple holes or other indications that the package had been tampered with, such as pages being removed. Both parties testified they had not removed the second page from the Landlord's Application.

I explained to the parties that it was likely there had been a problem with the photocopying of the Landlord's Application, where the second page, which is the reverse side, of the Landlord's Application had not been properly copied. I explained to the parties that it was more than likely an error occurred during the copying.

The Tenant cited section 59 of the Act regarding the Landlord's Application. The Tenant wanted the provisions of the Act strictly held against the Landlord.

I explained to the Tenant that if I was to apply the strictest interpretation of the Act against the Landlord, I also would have to apply the strictest interpretation of the Act against the Application made by the Tenant as well. I produced the Application of the Tenant which indicates the Tenant failed to provide an address for service in the required space of the Application. There was no writing in the service portion of the Tenant's Application.

The Tenant has handwritten a mailing address on the second page of his Application, but has not provided an address for service in the appropriate location on the front page of the Application.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I dismiss both Applications with leave to reapply.

I find that the Tenant was not provided a copy of the second page of the Landlord's Application setting out the particulars of the Landlord's claims. I find that, on a balance of probabilities, this was an error caused by the Branch in the photocopying of the copy of the Landlord's hearing package provided for service on the Tenant.

I also find that the Landlord may be prejudiced by time limits required under the Act, such as under section 38, to make another Application. As I have found the error of the Tenant not receiving the second page was likely caused by the Branch, I find and order that the Landlord has applied on time for the purposes of section 38 of the Act, pursuant to sections 62 and 66 of the Act. Nevertheless, I note that if the Landlord reapplies in this matter, that this should be done in a timely fashion and the issues and claims should not vary from the original Application made.

Having made the finding that this error was likely caused by no fault of either party, I further order that the filing fee for the Landlord's reapplying on this particular matter be waived by the Branch.

I find that the Tenant failed to provide an address for service on his Application. I find the Tenant failed to complete his Application in the approved form as required under the Act. The Tenant's Application is therefore dismissed with leave to reapply.

Lastly, I note that neither party in this face to face hearing had a hearing or other physical disability which requires a face to face hearing. Therefore, I order that any subsequent hearing between these two parties be conducted by telephone conference call hearing.

This decision is final and binding on the parties, except as otherwise provided for under the Act and 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 22, 2011.

Residential Tenancy Branch