



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNR, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, cost of repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim.

The landlord testified that her home consists of a main floor, a basement suite and a coach house. The landlord resides on the main floor. The coach house is the subject of this dispute.

The landlord stated that she witnessed the notice of hearing being served on the tenant in person, by the occupant of the basement suite. The landlord filed a proof of service of this notice of hearing, by fax on the morning of the day of this hearing. At the time of the hearing, the proof of service was not before me.

The tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Was the tenant properly served with the notice of hearing, the landlord's evidence and the landlord's application for dispute resolution? If so, is the landlord entitled to a monetary order to recover loss of income, cost of repairs, the filing fee and to retain the security deposit?

Background and Evidence

At the time of the hearing, there was no documentary evidence before me to support the landlord's claim of \$2,591.84. In addition, the landlord stated that she did not serve the tenant with her evidence as she was unable to locate him after he moved out, without giving her a forwarding address.

The landlord stated that based on information and instructions provided to her by an information officer of the Residential Tenancy Branch, she filed all her evidence by fax to the Branch office, on the morning of the hearing. At the time of the hearing, there was no documentary evidence before me. The landlord relied upon this evidence to support her monetary claim.

Analysis

Rule 3.6(a) of the *Residential Tenancy Branch Rules of Procedure* states that an applicant who intends to present and rely upon other physical evidence at the dispute resolution proceeding must provide a description of the evidence to the Residential Tenancy Branch and serve the respondent at least five (5) business days before the dispute resolution proceeding.

The tenancy ended on February 29, 2012 which gave the landlord ample time to serve her evidence to the Residential Tenancy Branch and to the tenant, prior to the morning of the hearing and at least five business days prior to the hearing.

Since the tenant was not served with the landlord's evidence, even if this evidence was before me, I am unable to use this evidence in the making of a decision to award the landlord a monetary order for her claim, as the acceptance of the evidence would prejudice the other party and result in a breach of the principles of natural justice. Therefore I am dismissing the landlord's application with leave to reapply.

Conclusion

The landlord's application is dismissed with 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: May 01, 2012.

Residential Tenancy Branch