



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in partial payment of those amounts.

This matter was originally set down as an oral hearing commencing May 2, 2012. On that date, the Parties were repeatedly warned by the Dispute Resolution Officer that their conduct during the proceedings was unacceptable and that it would not be condoned. In particular, the proceedings that day were unreasonably delayed due to the unwillingness of either party to cooperate with the result that 40 minutes of the one hour hearing was occupied solely in an attempt to determine if the parties had served each other with their documentary evidence. The hearing was reconvened to May 29, 2012 for further oral evidence.

On May 29, 2012, the Parties continued to act in an unacceptable manner. The Landlord repeatedly interrupted not only the Dispute Resolution Officer but also the other parties and her own witness. Consequently the Dispute Resolution Officer cautioned the Landlord a number of times that her conduct was disruptive and that if she continued to interrupt the proceedings she would be asked to leave. The conduct of the Advocate for the Tenants also obstructed the proceedings. On a number of occasions, the Tenants' advocate was advised by the Dispute Resolution Officer that her questions on cross-examination were either irrelevant or not productive and she was asked to move onto something else. Instead the Advocate for the Tenants argued with the Dispute Resolution Officer and continued with her line of questioning.

Given that the conduct of the Parties was significantly disrupting the hearing, the Parties were cautioned on at least three occasions that if their obstructive conduct continued, the oral hearing would be terminated and conducted by way of documents instead. An hour and a half into the hearing, with the Landlord continuing to interrupt and the advocate for the Tenants continuing with unproductive questioning, it was clear that little was being accomplished. When the Landlord continued to interrupt her witness (who was under cross-examination) despite a caution not to do so, she was asked to leave the conference call and did so. The Landlord's witness was then excused and the Tenant's advocate was advised that the oral hearing would no longer continue.

I find that the conduct of both Parties has made it impossible to continue this hearing and as an oral hearing and as a result, ***I ORDER pursuant to s. 74(2) of the Act that this matter is reconvened as a written hearing. Consequently, all oral evidence given to date will not be considered. As a further consequence, I ORDER the Parties pursuant to s. 61(b) as follows:***

1. The Parties have already submitted and exchanged all of their documentary evidence. Consequently, no further documentary evidence will be accepted and if it is delivered despite this direction, it will be excluded pursuant to RTB Rule of Procedure 11.5(b).
2. The Parties must provide **sworn** statements of any oral evidence that they or their witnesses intended to give at the hearing. These statements may refer to any documentary evidence that has already been submitted but must not include any new documentary evidence. Each of the parties must provide any sworn statements (not already submitted) to the other Party and to the Residential Tenancy Branch ***no later than June 22, 2012***. The Parties must also include with the copy of the sworn statements sent to the Residential Tenancy Branch, proof of service of the documents (on the other party). The proof of service must be of a type that requires a signature acknowledging receipt of the documents by the recipient (eg. registered mail).
3. The Parties must provide any responding sworn statements and/or written submissions to the other Party and to the Residential Tenancy Branch ***no later than July 13, 2012***. The Parties must also include with the copy of the sworn statements and/or written submissions sent to the Residential Tenancy Branch, proof of service of the documents (on the other party). The Proof of service must be of a type that requires a signature acknowledging receipt of the documents by the recipient (eg. registered mail).
4. If the Parties fail to provide proof of service of the above-noted documents on the other party in the manner directed, their evidence will be deemed not to have been served on the other Party and it will be excluded pursuant to RTB Rule of Procedure 11.5(b). **Note:** Section 90 of the Act says that a document delivered by registered mail is deemed to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. Consequently, if documents are sent by registered mail, copies of the mailing labels with the tracking numbers will be sufficient evidence of proof of service even if the other party fails or refuses to pick up the mail.
5. A Decision will be issued following receipt of the Parties' sworn statements and/or written submissions and a copy of it mailed to each of the Parties.

Conclusion

This Landlord's application is hereby reconvened as a written hearing. 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 30, 2012.

Residential Tenancy Branch