



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, unpaid rent and damage to the rental unit, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The above listed parties appeared and the issue of the landlord's evidence was discussed at the beginning of the hearing. A review of the dates contained in the landlord's evidence shows that most, if not all, relevant documents were available for filing with the landlord's application, on June 14, 2012; however the landlord delayed in filing their evidence until September 6, 2012, the 6th business day prior to the hearing.

The landlord was questioned as to why there was a delay in the submission of their extensive evidence, which was not filed with their application, but submitted the week prior to the hearing.

Rather than an explanation, the landlord's response was that the evidence was filed within 5 days of the hearing.

I questioned the tenant about receiving the landlord's evidence, with the tenant acknowledged having received the evidence package the weekend before the hearing.

I further questioned the tenant as to whether she had an adequate amount of time to review all documents and prepare her response, to which the tenant said that she had not.

I asked the tenant if she would like the opportunity for an adjournment in order to properly prepare a response, and she answered in the affirmative.

Issue(s) to be Decided

Is the landlord entitled to an order for monetary relief, authority to retain the tenants' security deposit and to recover the filing fee?

Should the hearing continue in light of the landlord's submission of available evidence not filed with their Application?

Analysis and Conclusion

Section 3.4 of the Residential Tenancy Branch Rules of Procedure require that to the extent possible, the applicant ***must*** file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

[Emphasis added]

In the case before, I find the landlord failed to provide a persuasive or any reason why, on the date they filed their application, they failed to file documentary evidence containing dates prior to the filing date of their application.

Section 6.3 of the Rules of Procedure gives the Dispute Resolution Officer authority to adjourn the dispute resolution proceeding to a later time on the Dispute Resolution Officer's own initiative.

Under Section 6.4 (c) I considered whether or not an adjournment was required to provide a fair opportunity for a party to be heard, in this case, the tenant having adequate time to prepare a response to the landlord's evidence.

Therefore, due to the landlord's failure to file all available evidence with their application and delay in submitting their extensive amount of evidence and serving upon the tenants until shortly before the hearing, I find that to continue with the proceeding would unduly prejudice the rights of the tenants to defend the landlord's Application.

Therefore I order the hearing be adjourned and scheduled to reconvene in accordance with section 64 of the *Residential Tenancy Act*. The parties are advised that the reconvened hearing is a continuation of the present hearing, and that the hearing will be conducted whether or not you are present.

Additional documentary evidence from the landlord on their application will not be accepted and if submitted will not be considered.

The tenants are at liberty to file their responses to the landlord's evidence, to be served in accordance with the Residential Tenancy Branch Rules of Procedure.

This interim 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: September 17, 2012.

Residential Tenancy Branch