



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 cross applications. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

As a preliminary matter, I determined that the person representing the tenant was not a tenant although he was named as a tenant on the tenant's Application for Dispute Resolution. I have amended the tenant's Application for Dispute Resolution to exclude the representative as a named party.

The landlord applied for a Monetary Order for damage to the unit, site, or property; unpaid rent or utilities; and authorization to retain the security deposit. The landlord testified that he gave his evidence package to "a lady" that answered the main door of the building where the tenant resides one week prior. The tenant denied receiving an evidence package from the landlord except for an email two days prior to this hearing. The landlord also testified that he had faxed his evidence package to the Residential Tenancy Branch one week prior to this hearing; yet, I had not received any evidence in support of the landlord's claim. I found the landlord failed to prove he served his evidence in a manner that complies with the requirements of the Act and Rules of Procedure. The landlord requested his application be withdrawn with liberty to reapply. The tenant's representative objected to this request. I heard from the landlord that he filed without first obtaining supporting evidence in order to meet the 15 day time limit to file an Application for Dispute Resolution to claim against the security deposit. However, I also heard from the landlord that the tenant had not supplied a forwarding address to the landlord prior to filing of his Application for Dispute Resolution. In these circumstances, I found the landlord's Application largely pre-mature and I granted the landlord's request for withdrawal. The landlord is at liberty to file another Application for Dispute Resolution within the time limits imposed by the Act.

The tenant applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and indicated in the details of dispute this claim pertained to moving expenses, including a truck rental. The tenant also indicated the dispute code that corresponds to return of the security deposit but the amount of the security deposit was not included in the amount requested for Monetary Order or in the details of dispute. With respect to supporting evidence, the tenant's representative submitted that the tenant's evidence was included with the Application for Dispute Resolution sent to the landlord via registered mail. The landlord acknowledged receiving the tenant's Application for Dispute Resolution but denied receiving any supporting evidence. The tenant's representative submitted that there was a receipt for a truck rental included in the tenant's evidence; however, I noted that I had not been provided a copy of such. I found I was unsatisfied the tenant had sufficiently served her evidence upon the landlord and I granted the tenant's request for withdrawal. As there may have been an issue with respect to whether the tenant had provided a forwarding address to the landlord in writing prior to filing this Application for Dispute Resolution I accepted that the tenant's application may have been pre-mature, in part. Therefore, I granted the tenant's request for withdrawal. The tenant is at liberty to file another ADR within the time limits imposed by the Act.

As both parties have withdrawn their applications and are at liberty to reapply I encouraged both parties to obtain information about preparing for any future dispute resolution proceeding from the Residential Tenancy Branch. I also explained to the parties that it is upon the party serving documents to prove service occurred in a manner that complies with the Act and meets the time limits established by the Rules of Procedure.

Conclusion

Both applications were withdrawn. Both parties are at liberty to file another Application for Dispute Resolution within the time limits provided by the Act.

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: February 20, 2013

Residential Tenancy Branch

