



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, SS, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

The tenant's original Application for Dispute Resolution, dated November 7, 2013, noted that the tenant was seeking a monetary order in the amount of \$1.00 but the details of dispute indicated that he had completed "emergency repairs" on the landlord's property in the amount of \$30,000.00.

The Residential Tenancy Branch charges a \$50.00 filing fee for monetary claims up to \$5,000.00 and for claims over this amount the filing fee charge is \$100.00. I note the landlord paid \$50.00 as a filing fee for his Application because he had identified that he was seeking only \$1.00.

On February 14, 2013 landlord submitted his evidence to the Residential Tenancy Branch which consisted of a copy of the Notice of Dispute Resolution Hearing document that included the following notation: "Amended 16 pages counterclaim details attached".

The rest of the evidence submitted was a typewritten document that included a breakdown of a monetary claim in the amount of \$27,846.00 however the breakdown goes on to say that the tenant will only claim \$24,000.00. The remainder of the document included 15 pages of the tenant's explanation for the claim and pictures of the residential property.

The tenant submitted that he was not able to submit his evidence or an accurate estimate of his claim at the time he applied because he did not have access to his computer due the eviction action that was underway in regards to his tenancy. He testified that he gained access to his computer in December 2013. He could provide no explanation as to why he did not prepare and serve his evidence sooner than February 11, 2014 to the landlord and February 14, 2014 to the Residential Tenancy Branch.

Residential Tenancy Branch Rule of Procedure 3.1 states that together with a copy of the Application for Dispute Resolution the applicant, in this case the tenant, must serve the respondent, in this case the landlord, with copies of, among other things, the details of the monetary claim and any other evidence the applicant intends to rely upon.

Rule 3.5 states that for evidence not available at the time the Application was submitted to the Residential Tenancy Branch the applicant must serve the respondent **as soon as possible** and at least 5 days prior to the prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between. In the case before me the deadline to meet this requirement would have been February 12, 2014.

While the tenant did meet the 5 day deadline to serve the landlord with evidence he did not meet this deadline for service of evidence to the Residential Tenancy Branch. Despite serving his evidence to the landlord at least 5 days prior to the hearing I find that he did not serve the evidence "as soon as possible".

Since the documentation and evidence provided consisted of only a typewritten document prepared by the tenant himself and photographs taken during the tenancy I see no reason why the tenant could not have provided this information when he submitted his original Application on November 7, 2013. Even if I were to accept that he needed to have access to his computer, which he states was in December, I find there was no reason he could not have submitted his evidence much sooner than the 5 day requirement.

As such, I advised the tenant I would not be considering his evidence.

In addition, Rule of Procedure 2.5 states that an applicant may amend an Application without consent if the dispute resolution proceeding has not yet commenced. The rule goes on to say that if the Application has been served, as in the case before me, and all requirements can be met to serve the respondent with an amended copy at least 7 days before the resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch.

The landlord also confirmed that he did not pay an additional filing fee of \$50.00 when he increased his claim from \$1.00 to \$24,000.00.

In relation to this case the 7 days prior to the hearing would have been February 10, 2014. As the landlord did not submit an amended Application but rather just a notation in his evidence; and because he did not submit this to the Residential Tenancy Branch until February 14, 2014; and because he did not pay the additional \$50.00 filing fee I decline the tenant's request to amend the amount of his claim to \$24,000.00.

I advised the parties that we would proceed on the tenant's claim in the amount of \$1.00 at which time the tenant requested to withdraw his Application at this time. I accepted

the tenant's withdrawal and advised both parties that the tenant remained at liberty to file a new Application for Dispute Resolution as allowed under the *Residential Tenancy Act*.

No issues were brought forward during the hearing in relation to portion of the tenant's Application for substituted service and I have made no rulings on this issue. However, the landlord did request that the tenant serve him by registered mail as opposed to in person and the tenant agreed that he would serve by registered mail.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for the completion of emergency repairs, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Conclusion

As per the above, I accept the tenant's withdrawal of his Application for Dispute Resolution.

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 21, 2014

Residential Tenancy Branch

