



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, RR

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 4, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- b. Whether the tenant is entitled to a monetary order?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began approximately 13 years ago. The rent at the time the tenancy ended was \$1850 per month payable in advance on the first day of each month. The

tenant was unsure about the amount he paid as a security deposit but estimated it to be \$750.

The tenants failed to pay the rent for July and August and the landlord obtained a monetary in the sum of \$3750 plus an Order for Possession in a hearing dated August 26, 2014. The tenants vacated the rental unit at the end of September 2014.

The tenants seek a monetary order in the sum of \$3750 for the reduced value of the tenancy. A significant portion of that claim relates to a claim that they were not able to fully use the deck because the landlord failed to properly repair a soft spot on the deck. At the hearing the tenant advised me that he has retained a solicitor and is bringing a claim for significant personal injuries after he fell through the soft spot on the deck.

Rule 2.9 of the Residential Tenancy Act Rules of Procedure provide that an applicant may not divide a claim.

I questioned the applicant as to whether this amount to dividing this claim and asked whether the results of this hearing might affect the prosecution of his personal injury claim.

I gave the tenant a choice. The Rules of Procedure provide that an arbitrator is to decide cases on their merits. I could dismiss this case with leave to re-apply. This would give the tenant the opportunity to consult his solicitor and determine whether this claim might jeopardize his personal injury case. The tenant would retain the opportunity to file another claim with the Residential Tenancy Branch if his solicitor so instructed. Alternatively I would decide the case based on the evidence and facts presented at the hearing. The tenant asked that I dismiss the claim with liberty to re-apply.

Order

I order the application dismissed with liberty to reapply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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: October 27, 2014

Residential Tenancy Branch

