



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDC, MNR, O, OLC, PSF, RF

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.

The Application for Dispute Resolution filed by the tenant was filed on January 5, 2015. The tenant failed to serve the landlord within 3 days as required under section 59(3) of the Act when he delayed serving the landlord until January 20, 2015. Section 59(3) of the Residential Tenancy Act provides that

Starting proceedings

59 (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

...

(6) An individual occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that this Act applies to that living accommodation.

The applicant testified he misread the document and thought he was to serve it on the landlord with 3 days of the hearing rather than within 3 days of receiving the application.

The major issue in this case is whether there has been an overpayment of rent as alleged by the tenant. The landlord testified her records do not indicate an overpayment but rather, the tenant owes her money.

The tenant's delay in serving the landlord has prevented the landlord from preparing and from submitting her records to the Residential Tenancy Branch. Further, it has prevented the parties from sitting down and reviewing the receipts and books of accounts to determine an overpayment has been made. The landlord testified the tenant has not paid the rent for January. In addition he owes rent from previous months. If there is an overpayment she is more than willing to repay the tenant or credit the tenant with any overpayment.

Determination and Orders

The parties must first be given an opportunity to exchange document and settling this matter on their own. Further, the tenant must give better particulars of his other claims so that the landlord is given reasonable notice of the clam being made. The principles of natural justice require that the respondent be given a reasonable opportunity to prepare and present a defense. It would not be fair to proceed with the hearing where the tenant delayed in the serving of the application and there are insufficient particulars about the claim. **I ordered that the tenant's application be dismissed with liberty to re-apply.**

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: January 22, 2015

Residential Tenancy Branch

