



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF
 MNDC FF

Preliminary Issues

Section 2.12 of the Rules of Procedure (hereinafter referred to as the Rules) allows a respondent to file an application for dispute resolution to counter a related application. That counter application is referred to as a cross application. The Rules stipulate that the issues identified in the cross application must be related to the issues identified in the application being countered or responded to. When making a cross-application, a party must apply as soon as possible and so that the service provisions in Rule 3.15 are met.

In this case, the Landlord filed their application for dispute resolution on October 29, 2014, seeking monetary compensation for damage to the unit, site, or property, and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement. The Tenants filed their application on October 10, 2014, seeking monetary compensation relating to a 2 Month Notice to end tenancy for landlord's use of the property.

Upon review of the Landlord's application, I do not find the matters to be sufficiently related to the primary issues listed in the Tenant's application. I therefore conclude that the Landlord's application was not a cross application as contemplated and defined in the Rules, and it was improperly scheduled as a cross application.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) # 2.5 stipulates that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant **must** submit to the Residential Tenancy Branch: a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49 [my emphasis added].

The Landlord's application for Dispute Resolution was filed October 29, 2014, seeking monetary compensation for \$5,000.00. No evidence or a detailed explanation of the claim was submitted with the application. In the Landlord's May 12, 2015, evidence submission they included a Monetary Order Worksheet indicating they were seeking compensation in the amount of \$7,655.00. The Tenants testified that they had not received the Landlord's evidence until 4 days prior to the hearing and were told it was too late to submit evidence in response.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added]. In this case the Landlord did not file an amended application and simply listed the additional claims in their evidence.

Based on the above, I dismissed the Landlord's application, **with leave to reapply** and proceeded to hear the matters pertaining to the Tenants' application.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant S.C., on October 10, 2014 seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each party gave affirmed testimony. The Tenants stated that they did not submit documentary evidence in support of their application.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants met the burden of proof to be awarded monetary compensation?

Background and Evidence

The undisputed evidence was the Tenants entered into a month to month written tenancy agreement that began on June 15, 2012. Rent of \$2,000.00 was due on or before the first of each month and on May 22, 2012 the Tenants paid \$1,000.00 as the security deposit. The Tenants vacated the property as of September 28, 2014.

The Tenants testified that on June 30, 2014 the Landlord served them with a two page 2 Month Notice to end tenancy for landlord's use of the property listing the following reasons:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse
- The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property

The Tenants testified that on September 28, 2014, they were at the unit finishing cleaning and trying to get their cat out of the wall, when the new tenants showed up with their furniture. The Tenants stated that the new tenants were not the Landlord's sister, they were two men. The Tenants stated that they gave the keys to the rental unit to the new tenants and afterwards they engaged in a text message conversation with the Landlord's son explaining that they gave the new tenants the keys.

The Tenants argued that they were told by the Landlord that her sister was moving into the unit and they noted that a sister was not considered a close family member as per the 2 Month Notice. They now seek compensation equal to two month's rent because the unit was not used for the reason listed on the Notice.

The Landlord testified that these Tenants had rented the entire house, which included a main floor and a basement suite. She stated that the two men who showed up on September 28, 2014 were her caretakers / maintenance people who look after all of her properties. These two caretakers were moving into the basement suite, which she stated was not a legal basement suite.

The Landlord submitted that the upstairs was to be occupied by her daughter and her sister. She stated that her sister began occupying the upstairs on October 1, 2014. Her daughter did not arrive from another Province until January 2015, at which time she began living in the upper level with the Landlord's sister.

In closing the Landlord pointed out that the 2 Month Notice was issued listing two reasons because one reason applied to the upper level of the house and the other reason applied to the basement suite as she described above.

The Tenants were given the opportunity to provide closing remarks and they each declined stating that they had nothing further to add.

Analysis

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 51(2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49, within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The party making the claim bears the burden of proof to establish their claim. In this case the Tenants bear the burden to prove the Landlord did not use the rental unit for the purpose(s) stated on the 2 Month Notice.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In the presence of disputed verbal testimony and in the absence of documentary evidence to prove the contrary, I find the Tenants provided insufficient evidence to prove the Landlord did not use the rental unit for the purposes stated on the 2 Month Notice. Accordingly, the Tenant's application is dismissed, without leave to reapply.

The Tenants have not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, with leave to reapply.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: May 25, 2015

Residential Tenancy Branch

