



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit or property; and, damage or loss under the Act, regulations or tenancy agreement. 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.

Preliminary and Procedural Matters

The landlord testified that the Application for Dispute Resolution and Notice of Hearing were sent to each of the tenants at the rental unit address on October 21, 2014 via XpressPost. The tenants acknowledged receiving the XpressPost packages. XpressPost offered by Canada Post meets the requirement to serve by registered mail and I was satisfied the tenants were sufficiently served with the landlord's hearing package in a manner that complies with the Act.

Evidence for this proceeding was served upon the Branch by the landlord in April 2015. Upon enquiry, the landlord acknowledged that evidence was not included with the hearing packages sent to the tenants on October 21, 2014 and not provided to the tenants thereafter. The landlord testified that the tenants moved out of the unit in April 2015. The tenants stated they did not receive evidence regarding this dispute with the Application for Dispute Resolution or at any other time and that they had moved from the rental unit in January 2015. Both parties provided consistent testimony that the tenants have not provided the landlord with a forwarding address.

The landlord testified that the tenants were provided with a copy of the repair invoice as evidence by an email from the manager dated October 21, 2014. The email was included in the evidence submitted to the Branch. It indicates the manager delivered "invoice #483 letter" to tenant JS and her brother on "October 10, 2015." JS denied receiving a copy of the invoice from the manager and testified that the manager merely showed her a document and they had a discussion about her brother writing a letter to the landlord to acknowledge responsibility for the damage to the balcony. SW testified that the landlord did not give her a copy of the invoice but stated she was shown a document in the landlord's office that showed the damage cost over \$4,000 to repair. I found the email of the manager insufficient to contradict the testimony of the tenants in the absence of testimony or other evidence from the manager and I was not satisfied that the tenants were in receipt of the repair invoice.

The Rules of Procedure and the requirements to serve available evidence with the Application for Dispute Resolution were discussed. As the landlord was informed during the hearing, some of the Rules of Procedure changed on June 28, 2014 including clearer requirements that an applicant is to serve the respondent with all available evidence with the Application for Dispute Resolution. Below, I have reproduced the relevant rules, in part:

2.5 Documents that must be submitted with an application for dispute resolution

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.

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) 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
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [Documents that must be submitted with an application for dispute resolution].

3.13 Applicant evidence provided in single package

Where possible, copies of all of the applicant's available evidence must be submitted to the Residential Tenancy Branch and served on the other party in a single complete package.

An applicant submitting any subsequent evidence must be prepared to explain to the Arbitrator why the evidence was not included in the initial evidence package.

[my emphasis added]

The landlord explained that head office makes the Applications for Dispute Resolution on-line and serves the hearing package upon tenants; and then evidence is gathered from various sources and served at a later date. The landlord appeared unaware of the new Rules of Procedure and requested an adjournment so as to provide an opportunity to serve the tenants with the landlord's evidence. In considering whether to grant the landlord's request for adjournment so that the tenants may receive the landlord's evidence the tenants stated they would not provide a forwarding address to the landlord or pick up the evidence from the landlord's office. Further, the tenants indicated they were familiar with justice proceedings and requested the matter be dismissed due to lack of evidence.

Given the tenants' unwillingness to provide a service address to the landlord so that the landlord could serve its evidence, I determined it reasonably unlikely that the evidence could be served upon the tenants by the time the hearing would reconvene. Therefore, I denied the landlord's request for an adjournment and **I dismissed this Application with leave to reapply within the statutory time limit 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: May 20, 2015

Residential Tenancy Branch

