



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The tenant confirmed receipt of the landlord's notice of hearing package. The landlord did not submit any documentary evidence. The tenant submitted 12 pages of documentary evidence consisting of written submissions and copies of rent cheques payable to the landlord. The landlord confirmed receipt of the tenant's documentary evidence.

Preliminary Issue

At the outset, the landlord requested an adjournment as his documentary evidence has gone missing. The landlord clarified that his evidence was stored in a work vehicle which was temporarily reassigned to a co-worker. The landlord stated that when he was able to regain access to the vehicle in July of 2015, all of his documentary evidence was missing and he was unable to locate it. The tenant disputes the adjournment request stating that she was prepared to proceed.

Residential Tenancy Branch, Rules of Procedure, rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

I find that the landlord has failed to provide sufficient evidence to satisfy me that an adjournment would allow him to proceed on a new date. The landlord's application was filed on April 10, 2015. The landlord provided direct testimony that the documentary evidence was lost in July 2015 and that the landlord has not made any attempts at re-creating or making copies of any of this documentary evidence. I find that an adjournment would be highly prejudicial to the tenant and that the landlord is unable to provide sufficient details of any documentary evidence that he might be able to provide on the adjourned date. I find that allowing an adjournment is contrary to Residential Tenancy Branch Rules of Procedure 1.1, states that "The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants." The landlord's adjournment request is denied.

The landlord also stated that he questioned the jurisdiction of the Residential Tenancy Branch (the Branch) to hear this dispute. I reminded the landlord that he filed this application, not the tenant. The landlord stated that this was a shared accommodation in which the landlord had access to the shared bathroom and kitchen. The landlord clarified that this was not his primary residence, but that he had access to these areas when he attended the rental premises to check and maintain the property. The landlord also stated that this was a property located in a vacation home area.

Section 4 (c) and (e) of the Act states,

What this Act does not apply to

- 4** This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

(e) living accommodation occupied as vacation or travel accommodation,

Based upon the landlord's direct testimony, I find that this is not shared accommodation in which the landlord shares the residence with the tenant. There is no "roommate" situation with the owner. The landlord merely has access when he attends to maintain the property. The landlord did not provide any evidence that this rental property was being occupied as vacation or travel accommodation. The landlord's application to dismiss this application based upon jurisdiction is denied. The hearing proceeded.

The landlord indicated that he wished to withdraw his application in order for him to seek a remedy in the courts. The tenant consented to the landlord's intent to withdraw his application. This application is hereby withdrawn. No further action is required.

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: September 17, 2015

Residential Tenancy Branch

