



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on April 1, 2015 seeking to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security and or pet deposit; and to recover the cost of the filing fee from the Tenants for this application.

This hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's Advocate. 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.

Each person gave affirmed testimony. The Landlord confirmed that she served the Residential Tenancy Branch (RTB) with copies of the same documents she served the Tenant. The Tenant's Advocate acknowledged that the Tenant received the evidence as submitted by the Landlord. No evidence was submitted by the Tenant and no issues were raised regarding receipt of the Landlord's evidence.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony.

Issue(s) to be Decided

1. Should the Advocate's request for additional documentary evidence be granted?
2. If so, how should this matter proceed?

Background and Evidence

Upon completion of each party's oral submissions, each person was given opportunity to ask final questions. It was during those final questions that the Advocate requested that the Landlord be required to submit additional documentary evidence to prove the Landlord's testimony that the owner has suffered a loss of rental income because his

insurance company was only paying the owner \$800.00 per month loss of rent instead of \$1,600.00 per month, which is the amount of rent the owner was receiving from the Tenants.

The Landlord did not dispute the Advocate's request for additional evidence. Rather, the Landlord stated that the length of time the Owner was receiving the insurance payment for loss of rent was estimated in her testimony.

After consideration of the undisputed request for additional evidence, I granted the Advocate's request and issued the Landlord the following Oral Order:

The Landlord is to submit to the Residential Tenancy Branch (RTB) or Service BC and to the Tenant's Advocate a copy of written documentation issued by the owner's insurance company which confirms the amount of the monthly lost rental income the owner is being paid. The document must be received at the RTB and the Advocate's office no later than September 30, 2015.

The parties were advised that further instructions would follow in an Interim Decision and the matter would be adjourned to be completed by written submissions. Neither party submitted any further questions and the teleconference hearing was concluded.

Analysis

The *Residential Tenancy Act* (the *Act*), and the Residential Tenancy Branch Rules of Procedure stipulate provisions relating to these matters as follows:

62(3) of the Act stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Rule of Procedure 3.17 provides in part, that the Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

If the Arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The Arbitrator must apply Rule 6.3 [*Whether to adjourn the dispute resolution proceeding*] and Rule 6.4 [*Criteria for granting an adjournment*].

Section 74 of the Act provides how a dispute resolution hearing may be conducted and stipulates that the director may conduct a hearing under this Division in the manner he or she considers appropriate. The director may hold a hearing in person, in writing, by telephone, video conference or other electronic means, or by any combination.

Rule of Procedure 3.19 stipulates that no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the Arbitrator.

After careful consideration of the foregoing I Ordered this matter to reconvene by written submissions upon receipt of the following, pursuant to sections 62 and 74 of the Act:

Orders for Documents required for the Written Proceeding

Landlord's Additional Evidence

The Landlord is ordered to submit to the Residential Tenancy Branch (RTB) or Service BC and to the Advocate's Office a copy of written documentation issued by the owner's insurance company which confirms the amount of monthly lost rental income the owner is receiving. The document must be received at the RTB or Service BC and the Advocate's office no later than **September 30, 2015**.

When the above document is submitted to the Residential Tenancy Branch (RTB) or Service BC it must be accompanied by a cover sheet marked attention to, along with a copy of the proof of service. The proof of service may be copies of Canada Post receipts if sent by registered mail or a signed receipt if served in person.

Tenant's Orders:

The Tenant or her Advocate must submit to the Residential Tenancy Branch (RTB) or Service BC and to the Landlord their written response to the Landlord's additional evidence submission, **No later than October 14, 2015**.

When the above response is submitted to the Residential Tenancy Branch (RTB) or Service BC it must be accompanied by a cover sheet marked attention to **and** listing, and a copy of the proof of service. The proof of service may be copies of Canada Post receipts if sent by registered mail or a signed receipt if served in person.

Landlord's Rebuttal

If the Landlord wishes to submit a rebuttal to the Tenant's or Advocate's written submission, that rebuttal must be served to the Residential Tenancy Branch (RTB) or Service BC and to the Advocate's Office no later than **October 23, 2015**.

When the rebuttal document is submitted to the Residential Tenancy Branch (RTB) or Service BC it must be accompanied by a cover sheet marked attention to **and** listing the, and a copy of the proof of service. The proof of service may be copies of Canada Post receipts if sent by registered mail or a signed receipt if served in person.

Requirements for Service

If service is completed in person, the receiving party must sign a document acknowledging receipt of the written submission, and a copy of the signed acknowledgment must be submitted to the RTB or Service BC in the package of the party who conducted the service.

If service is conducted by registered mail, Canada Post receipts displaying the date the package was sent, must be provided to the RTB or Service BC. Section 90 of the Act stipulates that registered mail is deemed received five days after it is sent. Therefore, refusal to pick up registered mail does not negate or avoid service.

Evidence that will be considered

All documentary evidence received on file prior to September 14, 2015 will be considered in my decision, along with all documents received in accordance with the above listed Orders, pursuant to section 62 of the Act.

Any evidence received after September 14, 2015 and which is not ordered or listed above will not be considered in my final Decision, pursuant to Rule of Procedure 3.19.

Conclusion

This matter has been adjourned pending receipt of additional evidence, as ordered above, and will be concluded by written submissions, pursuant to section 74(2)(b) of 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: September 15, 2015

Residential Tenancy Branch

