Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, RR, LRE, FF

Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation; authorization to reduce rent payable; and orders for compliance, repairs and services or facilities. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions and to respond to the submissions of the other party.

At the outset of the hearing I identified issues with respect to service of the tenant's hearing documents and evidence. The tenant acknowledged that hearing packages were sent to both landlords in one registered mail package in August 2015 and that the package did not include any evidence. Rather, the tenants waited to send submissions and a USB stick to the landlords on October 13, 2015 via registered mail. Digital evidence details and further written submissions were delivered to the landlords' children on October 14, 2015.

The tenant also indicated at the outset of the proceeding that she wanted to further increase the monetary claim against the landlords.

The landlords' submitted that in August 2015 they received a Notice of Hearing and a 10 page written submission from the tenants but not an Application for Dispute Resolution. The landlords submitted that in preparing their response they were uncertain as to the remedies the tenants were seeking. Then on October 14, 2015 the landlords' daughter was served in person with a copy of the Tenant's Application for Dispute Resolution. Further, the digital evidence detail document they received from the tenant was not sufficiently completed and the registered mail sent in October was received on October 15, 2015.

An applicant has a burden to prove they served each respondent with their application and any other documentation or evidence they intend to reply upon at the hearing. In hearing from both parties, I found the landlord's representative to be very clear and precise in her submissions whereas the tenant struggled somewhat in her testimony as to details of service.

Based on what I heard from both parties, I found that the tenant did not establish that the landlords were served in accordance with the Act and Rules of Procedure which were developed in accordance with the principles of natural justice.

Under the Act, an applicant is to serve each respondent with their application, along with other required documents and evidence. The tenants should have sent or given a hearing package to

each landlord separately. Further, the hearing package served upon each landlord must include the Tenant's Application for Dispute Resolution and I was not persuaded that it was included in the package mailed to the landlords in August 2015. Further, the application must include sufficient particulars which include: the nature of the dispute, the remedy sought, and any calculations if appropriate.

The Rules of Procedure provide that all available evidence is to be served upon the other party when serving the other party with the Application for Dispute Resolution and evidence that may come in to existence after filing may be served up to 14 days before the scheduled hearing. Further, an amended application must be served upon the other party no later than 14 days before the scheduled hearing. If digital evidence is served, the sender must verify that the other party was able to open and view the content of the digital evidence. Finally, when documents or evidence is mailed to the other party the sender must allow five days for mailing. In this case, the tenants did not serve the landlords with any evidence and made further submissions, including submissions marked as being "amended", approximately one week before the scheduled hearing. Further, I did not hear that the tenants confirm with the landlords that they were able to view the digital evidence.

Of further consideration was that the tenants were seeking to increase their monetary claim which would be prejudicial to do during the hearing.

In light of the above, I declined to proceed to hear the tenants' application as I found the hearing documents were not served in accordance with the Act and rules of Procedure and that it would be prejudicial to landlords to proceed in the circumstances or consider an increased monetary claim. As such, the tenants' application was dismissed it with leave to reapply.

It should be noted that I cautioned the tenant to refrain from interrupting the landlord's representative during the hearing a number of times and despite my instructions for her to stop she continued to interrupt. The tenant was informed that a party to a dispute must conduct themselves appropriately during a hearing as stipulated in the Rules of Procedure which includes following the Arbitrator's instructions to not interrupt.

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: October 22, 2015

Residential Tenancy Branch