



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD RR RPP FF

Introduction:

Both parties had made Applications and both attended the hearing. The landlord's claim for \$6,000 was for damage related to a fire and the landlord submitted his evidence (85 pages) to the Residential Tenancy Branch on January 6, 2016 which was late. The tenant said he never received any of this evidence. The landlord sent it by registered mail to a temporary address given to them by the tenant who was homeless for a time due to the fire. The notes on the Postal Service website indicate it was received after the cut off time on December 30, 2015 and delivery was attempted on December 31, 2015. However the tenant said his friend had moved by that time to another province so he received no notification of the availability of the evidence. . The landlord is seeking a monetary order pursuant to Sections 7 and 67 for damages to the property and compensation for other costs incurred due to the tenant's negligence, to retain the security deposit pursuant to Section 38 to apply to the damages and to recover the filing fee pursuant to Section 72.

The tenant requested the return of twice the security deposit pursuant to section 38, an Order that the landlord return his personal property pursuant to section 65 of the Act; and a refund of one month's rent as he was forced to vacate on November 8, 2015 due to the fire damage.

Preliminary Issue:

Should the claims be heard and the late evidence considered?

The Residential Tenancy Branch Rules of Procedure 3.14 states that evidence not provided at the time of the Application must be received by the Residential Tenancy Branch not less than 14 days before the hearing. I find the landlord submitted his evidence 8 days before the hearing to the Branch and the tenant did not receive it at all.

Rule 3.17 of the Rules of Procedure provides I have the discretion as to whether or not to consider the evidence if it is new and relevant and was not available at the time the

application was made. The landlord urged me to consider this criteria as it took time for them to assemble these documents. However, Rule 3.17 states I have the discretion to consider it “provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice’.

I find if I were to use discretion and consider this late evidence, it would be extremely prejudicial to the tenant who has had no opportunity to consider the significant and complex documentation in support of the claim and to respond to it. I find it would be unfair to the tenant and a breach of the principles of natural justice as a person must have an opportunity to answer to the case against him.

Conclusion:

I have considered none of the evidence on this matter for the reasons above. The security deposit and any other amounts allegedly owed to the tenant are also claimed to offset the considerable monetary claim of the landlord. Therefore, I dismiss both the Applications of the landlord and the tenant and give them leave to reapply. The landlord now has the current address for service on the tenant.

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: January 14, 2016

Residential Tenancy Branch

