



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application under the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing and were given an opportunity to make submissions. At the outset of this hearing, the landlord stated that he had received a substantial (77 pages) package of materials from the tenant one and a half hours prior to this hearing. The tenant testified that he had been sick and had not had an opportunity to get evidence to the Residential Tenancy Branch or the landlord at an earlier time. He confirmed that he had delivered the materials to the landlord one and a half hours prior to the hearing. The landlord testified that he had not had an opportunity to review the tenant's materials. The landlord testified that he is not able to respond to the tenant's materials at this time.

The landlord sought to have the tenant's application dismissed or, if not, to have his evidence excluded from this hearing. The tenant sought to have his materials considered at this hearing though he made very little argument in support of his position – only that he had not been able to provide it at an earlier time.

In considering whether to allow this late evidence to be considered, the Dispute Resolution Rules of Procedure are relevant,

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

(emphasis added)

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

(emphasis added)

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 or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

The tenant did not dispute that all of the materials submitted as evidence were available well prior to the day of this hearing. The tenant did not dispute that these materials were available earlier – again, only that he was very sick and could not provide them to the landlord earlier.

A respondent to a claim has the right to know the case against them. The Residential Tenancy Policy Guidelines (particularly Policy Guideline No. 12) indicates that it is essential to a fair and ... dispute resolution process that the respondent be informed of the case that they are to meet; including amounts sought against them and ... The Guideline states,

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a Dispute Resolution Proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

... Failure to serve documents in a way recognized by the Legislation may result in the hearing being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. Failure to serve evidence properly may result in that evidence not being considered and the hearing proceeding, or the hearing being adjourned ...

The landlord provided a reasonable position stating that, as he had only received the tenant's materials an hour and a half prior to the hearing he was not in a position to respond to the tenant's claim. Furthermore, the landlord pointed out that there were no other materials submitted at an earlier date by which to glean the nature and specifics of the tenant's application. The tenant was offered an opportunity to apply for an adjournment. He declined to do so.

Given the requirements of a fair and balanced hearing and given that the tenant argued against any adjournment of this matter, I find that it is necessary to exclude all of the tenant's evidentiary submissions dated February 26, 2016 and February 25, 2016.

The tenant sought to proceed with his application and the hearing of this matter. I note that no other documents were available as evidence in support of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on September 1, 2005 and continued until September 30, 2015. The landlord provided undisputed sworn testimony that the tenant did not return the keys to the rental unit until October 6, 2015.

The tenant testified that there were numerous tenancy issues unaddressed by the landlord during the course of his tenancy. He testified that;

- The bathroom tap leaked and the bathroom drain did not drain but that was fixed in 2013.
- The house was not clean when he moved in though he received reimbursement for cleaning.
- The stairs were broken when he moved in though that was fixed in 2010.
- The landlord borrowed (and did not return) tools from within his rental unit.
- The rental unit had mice.
- The kitchen vent didn't work and was not repaired.

The landlord testified that he was not aware of any of the outstanding issues described by the tenant when the tenant was residing in the rental unit. The landlord stated that he was unaware of many of the tenant's claims until this hearing. He testified that the unit was clean at move-in and that any issues raised by the tenant during the course of his tenancy was repaired or addressed in a reasonable period of time.

As I have excluded the tenant's late evidence, there is no other evidence to consider beyond the testimony of the two parties in this matter.

Analysis

The tenant sought a monetary award for the problems he claims existed in his rental unit. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant has not proven his loss. I find that the tenant has not provided sufficient evidence to support his claims of unaddressed repairs in the rental unit or the claims that his tools were taken by the landlord. The tenant's testimony was general, vague and lacked detail. The landlord disputed these claims and provided reasonable responses in the circumstances.

The tenant did not provide evidence (beyond his testimony to telephone calls) to show that he had attempted to address issues in the rental unit with the landlord. Nor did the tenant provide any testimony or documentary evidence to support his claim that the landlord stole from him. Beyond his testimony, the tenant did not provide any evidence that proved his claim. I find that the tenant's testimony was insufficient to support his claim.

I dismiss the tenant's entire application without leave to reapply.

Conclusion

I dismiss the tenant's application without leave to reapply.

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: March 1, 2016

Residential Tenancy Branch

