



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenants had applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The landlords had applied for a Monetary Order for damage to the rental unit, unpaid rent; and, authorization to retain the tenants' security deposit. The male tenant and the male landlord appeared at the hearing. Both applications have been dismissed with leave to reapply for the reasons that follow.

Tenants' Application

I heard that the tenant delivered the tenants' hearing packages to the mother/mother-in-law of the named landlords. Under section 89(1) an application for a monetary claim must be served upon each named respondent either in person or by registered mail or as so ordered by the Director. Leaving the hearing documents with a relative of the named respondents is not sufficient service. Accordingly, I was unsatisfied that the female landlord was sufficiently served. Since the male landlord appeared at the hearing and confirmed that his mother gave him the tenants' hearing package I considered deeming the landlord sufficiently served; however, I found the tenants' application and evidence to be lacking in other areas, as described below.

Under section 59 of the Act, an applicant is required to provide full particulars as to the nature of their claim. This requirement is in keeping with the principles of natural justice which provide that a respondent has the right to be put on notice as to the claims being made against them so that they may provide a response or defence. This requirement to provide full particulars would include a detailed calculation or explanation that is sufficiently detailed so that the party being served is able to understand what the amount includes and how it was calculated.

At the time of filing on January 20, 2016 the tenants claimed compensation of an estimated amount of \$4,000.00. The tenants did not provide a Monetary Order

Worksheet, some other form of detailed calculation, or other detailed information to show how this amount was derived and what it includes.

On June 15, 2016, the last day to submit evidence, the tenants submitted a USB stick to the Residential Tenancy Branch. The USB stick was not accompanied by a Digital Evidence Details worksheet or any other written description as to the content of the USB stick. The tenants' digital evidence was sent to the landlords by way of a Compact Disk (CD). The tenant acknowledged that he had not confirmed with the landlords whether the landlords could view the content of the CD. The landlord confirmed that he was able to open the CD and view its content.

The tenant stated that included on the USB stick/CD was a document providing for the "costs and expenses" of \$3,804.10 and that the tenants are seeking to recover this amount from the landlords. The landlord testified that he did not recall seeing the figure \$3,804.10 on the information contained on the CD.

In order to rely upon digital evidence, Rule 3.10 of the Rules of Procedure provide that digital evidence is limited to photographs, audio recordings and video recordings. Documents are not permitted to be provided in a digital format and are to be printed and served. The person serving digital evidence must also confirm with the other party that the other party was able to view, hear or read the digital evidence at least seven days before the hearing. Further, the digital evidence is to be accompanied by a duly completed Digital Evidence Details worksheet or other document that provides for a sufficiently detailed written description of the content. I find the tenants' digital evidence failed to meet these requirements.

In summary, the tenants failed to serve each named respondent in a manner that complies with the Act; the tenants failed to provide full particulars at the time of filing or at a later time by way of admissible evidence; and, their digital evidence was inadmissible.

Landlords' Application

The landlord testified that he sent a copy of the landlords' hearing package to each named tenant via registered mail. The tenant stated that only one registered mail package was received. The landlord was asked to provide the registered mail tracking numbers to me and his response was that he did not have that information available to him at the time of the hearing. Since the female tenant was not at the hearing, the landlord must be able to prove that the female tenant was served with the landlord's application and I found the landlord failed to do so. Considering the male tenant

appeared and confirmed that he received the landlord's application I considered deeming the male tenant sufficiently served; however, I found the landlords' application and evidence was lacking in other areas as described below.

The landlords indicated they were claiming \$5,153.25 against the tenants in filing their application. This amount was not accompanied by a Monetary Order worksheet or other detailed calculation. When the landlord was asked what this amount was comprised of he said damage, in the amount seen on the estimate, plus unpaid rent in an unspecified amount, plus garbage removal and cleaning costs in unspecified amounts. The tenant stated he did not owe rent and was uncertain as to how the landlords calculated the sum of their claim.

The landlord testified that he sent evidence to each named tenant via registered mail although he could not provide the date of mailing or the registered mail tracking numbers at the time of the hearing. The male tenant acknowledged receiving a CD and 12 printed photographs plus a copy of a written estimate. I noted that the landlord had provided 15 photographs to the Residential Tenancy Branch, three more than given to the tenants.

Although the landlord had completed a Digital Evidence Details worksheet, it was not duly completed on the second page. Further, on the form the landlords indicated that they had confirmed with the tenants that they were able to view the content of the CD; however, the tenant testified that his computer does not accommodate a CD and only has a USB port. Therefore, I found the landlord's digital evidence was also inadmissible.

In summary, the landlords could not establish that each named tenant was served with both the landlord's application and evidence; the landlords failed to provide full particulars with respect to the amount of compensation being claimed; and, the landlords' digital evidence was inadmissible.

Given the lack of full particulars, insufficient service, and inadmissible evidence on part of both parties, I dismissed both applications with leave to reapply so that both parties may determine what is required in order for an application to proceed. The tenant pointed out this is not the first dispute resolution proceeding the parties have had. Upon review of a decision issued for a prior hearing, the Arbitrator had noted deficiencies with respect to providing particulars and evidence prior to the hearing. As such, I strongly encourage the parties to contact an Information Officer before re-filing. At the very least, information is contained on the Residential Tenancy Branch web-site and I would encourage the parties to read the Policy Guideline 42: *Digital Evidence* and

Rule 3.10 of the Rules of Procedure if they intend to rely upon digital evidence in the future. Both the Monetary Order worksheet and Digital Evidence Details worksheet are located on the Residential Tenancy Branch website for participants to print and include with their applications.

Security Deposit

Residential Tenancy Branch Policy Guideline 17 provides that where a landlord requests authorization to retain a security deposit and the landlord's claims are dismissed, the landlord will be ordered to return the security deposit to the tenant, provided the tenant has not otherwise extinguished the right to return of the security deposit. In this case, the landlords requested authorization to retain the security deposit and I have dismissed the landlords' application; however the landlord testified that he had not received a forwarding address from the tenant in writing. The tenant testified that he had given his forwarding address to the landlord in writing.

I enquired as to how the landlord determined the service address for the tenants as seen on the landlord's application. The landlord testified that he obtained it from the tenants' current landlord when that landlord called for a reference check. The tenant acknowledged that the tenants had not given the landlord that address.

With a view to ensuring the security deposit is disposed of in a legal and timely manner, the tenant was given the option to provide his forwarding address during the hearing. The tenant provided it during the hearing and I have recorded on the cover page of this decision. The landlord also confirmed that he wrote it down. I ordered the landlord to be considered in receipt of a forwarding address from the tenants, in writing, as of the date of this hearing. As such, if the landlord intends to make a claim against the security deposit he will have 15 days to do so by filing another Application for Dispute Resolution.

The landlord then stated that there was no security deposit left as the female tenant had authorized the landlords to retain it for unpaid rent. The landlord acknowledged that he did not have the tenant's authorization to keep the security deposit in writing. The landlord was strongly encouraged to ensure he complies with my order and the Act with respect to refunding or making a claim to retain the security deposit within the time limit for doing so.

The tenant was of the position that the landlord already had his forwarding address in writing. I informed the tenant that in making the above order I have not taken away any rights from the tenants and if they wish to pursue the landlord for doubling of the deposit

by filing another Application for Dispute Resolution; however, they would have the burden to prove an entitlement to such.

Conclusion

The tenants' application was dismissed with leave.

The landlords' application was dismissed with leave.

The landlord is considered to be in receipt of the tenants' forwarding address, in writing, as of the date of this hearing. Both parties are at liberty to make subsequent applications with respect to the security deposit, and another other claims a for damage and loss, within the applicable time limits provided under the Act.

Both parties are encouraged to familiarize themselves with service requirements, requirements for submitting digital evidence, and information that must be contained in the Application before filing another Application for Dispute Resolution.

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: June 30, 2016

Residential Tenancy Branch