Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for compensation for damage to the rental unit; unpaid rent or utilities; and, authorization to retain he security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord had identified three tenants in filing this application; however, I heard that only two of the tenants were served with a hearing package. The landlord confirmed that she intends to pursue only the two tenants that she served. Accordingly, I amended the application and excluded the third named tenant as a party to this proceeding.

In filing this application in April 2016 the landlord indicated that she sought a Monetary Order in the amount of $1,600.00 (which is the sum of the security deposit and pet damage deposit); however, in the details of dispute the landlord indicated she was seeking compensation for three amounts that total less than that: $118.00 for bio-treatment; $410.29 for unpaid utilities; and, $361.29 for loss of use and enjoyment suffered by subsequent tenants. The only evidence submitted at the time of filing was a copy of the tenancy agreement and condition inspection report. In the details of dispute the landlord indicated that all supportive information would follow. However, the landlord waited until August 10, 2016 to send supporting documents and evidence to the tenants, by mail. By way of her submissions made on August 10, 2016 the landlord appeared to attempt to seek an increased amount of compensation but she did not complete an Amendment.

On August 11, 2016, without having yet received the landlord's supporting documents and evidence, the tenant prepared a response with respect to the three specific items identified in the landlord and he served it so that it would meet the service deadline for a response.

The tenant testified that he received the landlord's supporting documents and evidence after he served his response. Up until that time he understood he was being pursued for the three items identified on the application. The tenant also stated he did not understand the reason the landlord was pursuing him for utilities since the tenants paid the utility bills. The landlord acknowledged that she subsequently determined that the tenants had paid the utilities and she withdrew that portion of her claim.

As to the reason the landlord delayed in providing her supporting documents and evidence, the landlord stated that she was informed by an Information Officer that she had until August 10, 2016 to mail her documents to the tenant. The landlord acknowledged that the damages for which she seeks compensation was incurred in the month of April 2016 but that she had been busy with work, going on holidays, and travelling afterward.

Section 59 of the Act provides that in making an Application, the applicant is to provide full particulars of the nature of the dispute. This requirement is in keeping with the principles of natural justice and a respondent's entitlement to understand and respond to the claims being made against them. Evidence to support a claim is to be submitted in accordance with the Rules of Procedure.

The Rules of Procedure deal with the service of evidence in several sections. Below, I have reproduced the most relevant rules to this case, with my emphasis underlined:

> **2.5 Documents that must be submitted with an Application for Dispute Resolution**
> To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:
>
> - a detailed calculation of any monetary claim being made;
> - a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
> - copies of all other documentary and digital evidence to be relied on at the hearing.

3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible.

If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

3.13 Applicant evidence provided in single package

Where possible, copies of all of the applicant's available evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC office and served on the other party in a single complete package.

An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not included in the initial evidence package.

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.

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.

Rule 4 of the Rules of Procedure provide for the manner and deadlines for amending an Application. Below, I have reproduced portions of Rule 4, with my emphasis added.

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

• completing an Amendment to an Application for Dispute Resolution form; and

• filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC office.

4.3 Time limits for amending an application

Amended applications and supporting evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC office as soon as possible and in any event early enough to allow the applicant to comply with Rule 4.6.

4.6 Serving an Amendment to an Application for Dispute Resolution
As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

As seen in the Rules provided above, the landlord had an obligation to serve the tenants with her detailed calculations, supporting documents and evidence, and a properly completed Amendment form as soon as possible and in any event not less than 14 days before the hearing. To meet the service deadline, the submissions and evidence must be ***received*** by the tenants at least 14 days before the hearing. Putting the material in the mail on August 10, 2016 would not meet this requirement for a hearing scheduled to commence August 24, 2016. Therefore, I find the landlord failed to provide full particulars, evidence, and an Amendment in a manner that complies with the Rules of Procedure.

I also noted that landlord did not present grounds to justify a late submission and I found that in doing so she unduly prejudiced the tenants since they had not had the benefit of understanding all of the landlord's claims against them and reviewing the landlord's evidence when they providing their response.

Considering the tenants had prepared a response to the three specific claims included in the details of dispute on the Application, I informed the landlord that I would proceed to hear the two claims that remain but that I would not permit the evidence and written submissions mailed on August 10, 2016 in making my decision. The landlord stated that she did not wish to limit her claims to those two items only. Having heard the landlord ***may*** have received erroneous or incomplete information from an Information Officer with respect to serving her evidence I considered dismissing the landlord's application with leave to reapply.

The tenant indicated that he has filed an Application for dispute Resolution against the landlord and that matter is set for hearing on February 7, 2016. I note that in filing the tenant's Application he indicated it was to be crossed with this Application; however, at the time of filing there was insufficient time to join the Applications.

In light of all of the above, I dismissed the landlord's Application with leave to reapply. I encourage the landlord to reapply with sufficient time to join her Application with the tenant's Application.

Since the landlord is still holding the tenants' security and pet damage deposit and the landlord's claims against the tenants have been dismissed with leave, in keeping with Residential Tenancy Branch Policy Guideline 17: *Security Deposits and Set-Off*, I order the landlord to return the deposits to the tenants. The tenants are provided a Monetary Order in the amount of $1,600.00 to serve and enforce as necessary.

Conclusion

The landlord's monetary claims against the tenants were dismissed with leave. The tenants are provided a Monetary Order in the amount of $1,600.00 for return of the security deposit and pet damage deposit.

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 23, 2016

Residential Tenancy Branch