



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 was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on January 22, 2016. The Landlord applied for: a Monetary Order for unpaid rent; a Monetary Order for damage to the rental unit; for money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security and pet damage deposits; and, to recover the filing fee from the Tenant.

The Landlord appeared for the hearing with her legal counsel. The Tenant appeared for the hearing with a support person, an agent, and an advocate. Only the Landlord, the Tenant and the Tenant’s agent provided affirmed testimony during the hearing; the Tenant’s advocate and the Landlord’s legal counsel made submissions. The Tenant’s support person did not testify. While both parties also made available a witness to testify for this hearing no witness evidence was given as the parties reached agreement by mutual resolution during the hearing as detailed below.

Preliminary Issues

The Tenant’s agent and advocate confirmed that the Tenant had received the Landlord’s Application by registered mail shortly after it was sent by the Landlord on January 27, 2016. The Tenant’s advocate stated that the Landlord’s Application disclosed a claim of \$10,000.00 with no attached evidence of the monetary claim being made against the client at the time it was served and that the documentary evidence eventually provided by the Landlord was late. As a result, I allowed the parties to provide submissions on the issue of whether the Landlord’s documentary and photographic evidence should be considered.

The Tenant’s advocate stated that the Landlord had served a large amount of evidence to the Tenant a week prior to this hearing. The tenant’s advocate explained that this was

outside of the time limits for the service of evidence and that the Tenant and her agent and advocate were not given sufficient time to consider and properly respond to the large amount of documentary and photographic evidence relating to the Landlord's extensive monetary claim against the Tenant. The Tenant's advocate also stated that the Landlord had increased her monetary claim to \$15,239.24 without following the Residential Tenancy Branch Rules of Procedure (herein referred to as the "Rules"). The Tenant's advocate stated that the Landlord's late service of her documentary evidence was prejudicial to the Tenant and asked that the Landlord's Application be dismissed.

The Landlord confirmed that she had provided her documentary evidence, which consisted also of a multitude of photographs to the Tenant and to the Residential Tenancy Branch on August 6, 2016, namely one week prior to this hearing. I asked the Landlord why there was such a long delay in providing evidence to the Residential Tenancy Branch and to the respondent Tenant when the Application had been made at the end of January 2016. The Landlord testified that she had been in hospital undergoing major heart surgery which prevented her from submitting her evidence.

The Landlord testified that she had spoken with the Residential Tenancy Branch who informed her that if she submitted evidence on August 6, 2016, this would not be considered late. The Landlord was unable to point me to medical evidence in the extensive documents she had provided into evidence, but submitted that it was these medical issues which occurred in June 2016 that hindered her submission. The Landlord confirmed that she had received the information sheet from the Residential Tenancy Branch with a copy of her Application after she had filed it in January 2016. That information sheet details the time limits for the service of evidence.

The Tenant's advocate disputed the Landlord's testimony stating that they had not received from the Landlord any medical evidence that would suggest that the Tenant was unable to provide her evidence before the hearing in a timely manner. The Tenant's advocate stated that the Landlord could have asked an agent to provide this evidence, or requested an adjournment of the proceedings prior to the hearing.

The Landlord's legal counsel asked that they be allowed to withdraw the Application due to the service of evidence issues and be given leave to re-apply. However, the Tenant's advocate disputed this request stating that the Landlord had made her Application at the start of 2016 and had plenty of time to serve the Tenant with evidence. Therefore, it would be prejudicial and an abuse of the dispute resolution process if the Landlord were allowed another opportunity to make the Application again on the basis that she failed to adhere to the Rules for the service of her evidence. The Tenant's advocate also pointed

out that the Tenant was not willing to take the time and effort to go through another hearing as she had made herself and a witness available for this hearing.

Preliminary Findings

The Rules provide for the conduct of the dispute resolution process. Rule 2.5 requires an applicant to provide a detailed calculation of a monetary claim against the respondent. Rule 3.14 states that evidence not provided with the Application must be served by an applicant no less than 14 days prior to the hearing. Rule 3.17 states that an Arbitrator has the discretion to determine whether to accept late evidence that does not meet the time limits for the service of evidence provided that this does not prejudice a party or result in a breach of the principles of natural justice. Rule 3.7 requires that any evidence provided prior to the hearing must be organized, clear and legible. Rule 4.1 provides the process a party must follow if they want to amend an Application prior to the hearing. Rule 5 provides for the process a party must follow if they require a re-scheduling of the hearing.

Based on the submissions and evidence provided by the parties and the foregoing provisions of the Rules, I find the Landlord failed to meet the time limits set by the Rules to serve her documentary and photographic evidence. The Rules are intended to ensure that parties submit evidence in a timely manner that allows the other party sufficient time to consider: the claim being made against them; whether this has changed since the time of the original Application; and allow time for the other party to prepare and provide a rebuttal prior to the hearing.

In this case, I find the Landlord made the Application at the end of January 2016 and therefore had until August 29, 2016 to ensure the Residential Tenancy Branch and the Tenant received her documentary and photographic evidence. This left seven months for the Landlord to prepare and serve the Tenant with that evidence. The Landlord argued that during that time she had medical issues which prevented her from submitting evidence. In this respect, while I accept the Landlord may have suffered with medical problems, I find the Landlord provided insufficient evidence to show that she was hindered by these medical issues for the entire seven months which she had to serve evidence to the Tenant. I find it is prejudicial to the Tenant to be served with a large amount of documentary evidence including black and white photographic evidence which did not allow sufficient time for rebuttal arguments which would have been essential for the Tenant to have provided in the face of such a large monetary claim being made against her.

The Landlord also provided unclear black and white photographs, colour copies of which were still in transit to the file at the time of this hearing because they were submitted late. The Tenant's advocate also confirmed that they had been provided with black and white photographs which were not clear. Furthermore, I find the Tenant failed to adhere to the Rules, which were extensively detailed in the information sheet that was provided to her when she made the Application. I am unable to comment on the conversation the Landlord claimed to have been given by the Residential Tenancy Branch and I am only able to conclude that the information sheet the Landlord was provided clearly explains the service of evidence time limits as provided for by the Rules.

I accepted the Tenant's advocate's submissions that the failure of the Landlord to follow the rules in amending her Application to increase the monetary claim, which cannot be done through evidence and must follow a formal process laid out in Rule 4.1, also prejudiced the Tenant. I find the Landlord failed to seek other remedies laid out in the Rules, such as requesting an adjournment of the proceedings through a written request, which could have avoided this situation.

In conclusion, I found that if I were to have allowed the Landlord's documentary and photographic evidence, this would have created a prejudice to the Tenant. The Tenant's advocate refused to consent to allow the Landlord to withdraw the Application or have it adjourned. In this respect, I agree. An applicant does not have the automatic right to withdraw an Application on the basis that they have failed to meet the serve deadlines of the Rules and have it re-heard after filing the Application again. I find that had I allowed this, this would have violated the principals of nature justice and forced the Tenant to have to prepare and appear for another hearing.

As a result, I explained to the parties that I would not be considering the Landlord's documentary and photographic evidence in this hearing. However, I declined to dismiss the Landlord's Application on this basis that she has no evidence to support her monetary claim as a party is still at liberty to provide evidence into oral testimony so they too are not prejudiced. As a result, the hearing continued to hear the Landlord's oral evidence in respect to the monetary claim made against the Tenant.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present permitted evidence, make submissions to me, and cross examine the other party on the evidence provided.

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings,

the settlement may be recorded in the form of a decision or an order. At the conclusion of the hearing, I offered the parties an opportunity to settle the dispute by way of mutual agreement. Both parties considered this option of mutual resolution, turned their minds to compromise, and achieved a resolution of the dispute as follows.

Settlement Agreement

The parties agreed that the Landlord still retained the Tenant's security and pet damage deposit for a total amount of \$562.50. The parties agreed that the Landlord can keep the Tenant's security and pet damage deposits in full satisfaction and settlement of the Landlord's Application.

During the hearing, both parties disclosed further potential monetary claims against each other. However, the parties agreed that this agreement to settle this matter was being made on the basis that it was in full satisfaction of the Landlord's Application and in final satisfaction of any dispute between the parties.

The parties confirmed their understanding that settlement in this matter would bar any of the parties from making any further Application against the other and that this agreement was being made to put finality to all of the issues between the parties in this tenancy and dispute. Therefore, no further Applications are permitted and the parties may provide a copy of this Decision if a party does bring a claim forward.

The parties confirmed their understanding and agreement to voluntary resolution in this manner both during and at the end of the hearing. This agreement is fully binding on the parties and this file is now closed.

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 13, 2016

Residential Tenancy Branch

