



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 an application by the landlord for a monetary order for cost of repairs, cleaning and loss of income.

Service of the hearing document, by the landlord to the tenant, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on March 11, 2016. The tenant had not provided the landlord with a forwarding address. The landlord carried out his own search and found the out of province address at which the tenant currently resides. The landlord stated that the tenant signed in acknowledgement of having received the notice of hearing package.

Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Did the landlord make this application in a timely manner? If so, is the landlord entitled to his monetary claim?

Background and Evidence

The tenancy began on August 31, 2013. The parties had attended two hearings prior to this one, which were conducted on January 13, 2014 and March 26, 2014. The landlord was granted an order of possession and two monetary orders in decisions that resulted from these two hearings.

Pursuant to the order of possession, the tenancy ended on February 15, 2014. The landlord made this application on February 19, 2016 more than two years after the end of tenancy.

The landlord spoke at length about the technical problems he had with making this application prior to the deadline of February 15, 2016. A letter dated January 14, 2016 from the Residential Tenancy Branch Technology department informed the landlord that he had limited time to reset his password to access his online account. The landlord stated that he attempted to do so but was unsuccessful.

The landlord stated that he made several calls to the technology department after January 14, 2016 and was only able to make his on line application on February 19, 2016. The landlord did not provide any additional documents to support his testimony about the problems he encountered while attempting to file this application.

The landlord went on to describe the advanced age and poor health of the other landlord and the difficulties that they both faced with making this application within the legislated timeframe of two years.

Analysis

Section 60 of the *Residential Tenancy Act* addresses the latest time that an application for dispute resolution can be made. Section 60(1) states that an application for dispute resolution must be filed within two years of the date that the tenancy ended. If an application is not made within the two year period, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist.

The landlord testified that the tenancy ended on February 14, 2014. The landlord filed this application on February 19, 2016. Accordingly I find that the landlord failed to make this application within two years of the date the tenancy ended.

Pursuant to section 60 of the *Residential Tenancy Act*, since the landlord did not file an application for dispute resolution within two years of the date that the tenancy ended, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist. Therefore I must dismiss the landlord's application for a monetary order related to the tenancy.

However based on the testimony of the landlord, I will give the landlord an opportunity to provide evidence that he attempted to file his application prior to the deadline of February 15, 2016 and was unsuccessful due to technical difficulties that were beyond his control.

I accept that the landlord contacted the technology department sometime around January 14, 2016 with a request to reset his password. The technology department replied to the landlord and gave him a limited time window to reset his password.

The landlord stated that he continued to have difficulty and spent a lot of time on the phone with the technology department.

If the landlord provides documentation of all his attempts to contact the technology department by way of phone records and emails during the period of January 14, 2016 and February 15, 2016, I grant the landlord leave to reapply.

Without any documentation to support the landlord's testimony for the reasons he was unable to apply within the two year time frame, I dismiss this application with leave to reapply.

Conclusion

The landlord's application is dismissed with leave to reapply on condition that the landlord provides evidence from the technology department that his attempts to file this application between the period of January 14 to February 15, 2016, were unsuccessful due to problems with the system.

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: October 07, 2016

Residential Tenancy Branch