



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant's applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's counsel (the landlord) confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. The tenant confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. No issue of service was raised by either party. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act with the notice of hearing packages and the submitted documentary evidence.

Preliminary Issue(s)

The landlord's counsel raised an issue regarding the limitation period preventing the tenant's application for dispute. Section 60 of the Act states in part,

60 (1) If this Act does not state a time by which **an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends** or is assigned.

(2) Despite the *Limitation Act*, **if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes** except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

As such, it was clarified with both parties and agreed upon that the tenancy ended on September 5, 2014 based upon the written endorsement of a writ of possession by a bailiff. Both parties confirmed that on September 5, 2014 possession of the rental premises was returned to the landlord. In reviewing the 2016 Calendar and the tenant's application for dispute, I find that the tenant's application for dispute was filed on November 1, 2016, making it 56 days past due of the 2 year limitation period to file an application for dispute. As such, I find that both the tenant's application and the landlord's cross-application claims are dismissed.

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: May 5, 2017

Residential Tenancy Branch