Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant.

The tenant testified each landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 10, 2017 in accordance with Section 89. The tenant submitted tracking information to confirm that both landlords refused to accept this registered mail.

Based on the testimony and evidence of the tenant, I find that each landlord has been sufficiently served with the documents pursuant to the *Act* and has deliberately attempted to avoid service of these documents.

At the outset of the hearing I confirmed with the tenant that he had moved out of the rental unit on December 31, 2014 and that he submitted his Application for Dispute Resolution on January 1, 2017.

When I asked why the tenant waited until January 1, 2017 to file his Application he stated that he had intended to submit his Application on the final day available to him to do so. However, he stated that he had been out of the country from approximately December 18, 2016 to February 10, 2017 and when he went to file his Application on December 31, 2016 his internet service was not available at the resort where he was staying.

The tenant provided that the reason he had waited so long to file in the first place was that he could not find all of his paper work that was relevant to his claim. However, I

note that the tenant did not submit any of his evidence until June 16, 2017 – 10 days before this hearing, he stated it was because he could not find the relevant documents until he searched a backup on his computer. Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

Rule of Procedure 3.11 states that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

I also note that the tenant did not serve the landlords with his hearing package until 30 days after he received and not within the 3 days required under Section 59 of the *Act*.

Section 60(1) of the *Act* states that if the *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.

While I accept Section 60(1) allows for a party to a tenancy up to 2 years from the end of the tenancy to submit their Application, I find that there is no valid reason for the tenant, in this case to do so. While he stated that he could not find his paperwork until then, I note that he used the same excuse to explain why he did not serve that evidence to the landlords or the branch until 6 months after he made his Application that he couldn't find it until that time. I find this testimony to be unreliable.

Furthermore, despite the ability to apply online from anywhere in the world, I find the tenant relied upon a standard of access to the internet he was familiar with in Canada, without any consideration for such access in a foreign country. I find the tenant relied on that foreign standard of technology to his determinant, as it was not available to him on the last possible day he could have submitted his Application. I also note that the tenant has provided no evidence to confirm that his internet access was restricted during the relevant time period.

As a result, I find if the tenant had exercised due diligence and submitted his Application at any time during the 2 years and more specifically, before he left the country he would have submitted his Application within the 2 year time frame. Despite the tenant's repeated testimony that it was his constitutional right to leave the country whenever he

wanted, I find I do not disagree, however, that does not absolve the tenant from filing his Application within the 2 year period.

I verbally advised him that I found he had failed to submit his Application for Dispute Resolution within the 2 year time frame allowed under Section 60(1) and as a result, I would be dismissing his Application. The tenant then submitted that despite his evidence saying that he was moving out on December 31, 2014 and his previously provided testimony that he moved out on December 31, 2014 he was not sure if he moved out on December 31, 2014 and that it may have been January 1, 2015.

I note, however, the tenant could not provide any testimony regarding specific dates that he states he was out of the country at the time he submitted his Application which was only a few months ago. As such, I am not sure that his recollection in the hearing that he may have moved out after he planned to or the date that he said he did. I find it is just as likely that he moved out prior to the December 31, 2014.

The only documentary evidence submitted that contains a date that the tenancy would have ended is the tenant's notice he provided as evidence which states that the tenancy was to end on December 31, 2014. If the tenant remained after that date, I find that the tenancy had ended on December 31, 2014 and he was overholding. As a result, I find the tenant was still required to submit his Application no later than December 31, 2016.

The tenant also provided testimony that he could not serve the landlords with his Application and hearing documents until February 10, 2017 because there had been a postal problem in the country he was in and he could not mail it until he returned to Canada and he could not contact anyone in Canada who would act as his agent to put it in the mail.

From all of the tenant's submissions, I find that while he was aware or should have been aware of the deadlines required to submit his Application for Dispute Resolution; serve the landlords with his Application and hearing documents; and submit evidence to both the landlords and the Residential Tenancy Branch, he failed to meet any of the applicable deadlines.

As such, I find the tenant had sufficient opportunity to file his claim within the required time frames and chose not to do so until the very last day. As a result, and due to internet access unavailability in a foreign country he was not able to complete his Application. As the tenant had 2 years to submit his application and provided no real

reason why he could not have submitted it at any time within that 2 years, I find there are no grounds to provide an extension of time to do so.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for failure the landlord to provide heat and for loss of quiet enjoyment; for return of double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 38, 67, and 72 of the *Act.*

Conclusion

Based on the above, I decline to hear the tenant's claim and dismiss his Application for Dispute Resolution without leave to reapply.

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 27, 2017

Residential Tenancy Branch