



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANAVETS SENIOR CITIZENS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC, FFT

Introduction

On April 16, 2018, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement, and for an order for the Landlord to comply with the Act, Regulation or tenancy agreement.

The matter was scheduled as a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant is seeking compensation of \$16,100.00 for a loss of quiet enjoyment due to noise. The Tenant uploaded digital evidence consisting of 349 audio files.

Section 59 of the Act provides that an application for dispute resolution must be in the applicable approved form, and include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The director may refuse to accept an application for dispute resolution if in the director's opinion; the application does not comply with the requirement to provide full particulars.

The Residential Tenancy Branch (“The RTB”) website allows an applicant to apply for dispute resolution online. The website contains information for applicants applying online; including

information about preparing evidence and requirements for preparing digital evidence. The website provides information about the RTB Rules of Procedure that are in place to ensure a fair, efficient and consistent process for resolving disputes for Landlords and Tenants.

RTB Rule of Procedure 3.10.1 Description and Labelling of Digital Evidence requires that a party submitting digital evidence must include with the digital evidence:

- a description of the evidence;
- identification of photographs, such as a logical number system and description;
- a description of the contents of each digital file;
- a time code for the key point in each audio or video recording; and
- a statement as to the significance of each digital file;

A party submitting digital evidence must provide the information required under 3.10.1 using the Digital Evidence Details document (form RTB-43).

RTB Rule of Procedure 3.14 requires that 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.

The documentary evidence that was uploaded by the Tenant consists of 349 audio files. The audio files are named by numbers but do not contain any other identifier. The audio files range from 1 minute in duration to 22 minutes in duration with an average duration of approximately 8 minutes. There is approximately 46 hours of audio recordings. Some of the audio files were uploaded 10 days before the hearing.

The Tenant testified that his lawyer applied on his behalf. The lawyer is no longer representing the Tenant and was not present at the hearing. The audio files uploaded into the RTB case management system indicate the files were received from the Tenant's lawyer. The Tenant is not aware if his lawyer submitted a digital evidence details document. There is no digital evidence details document on file.

I find that the Tenant's audio evidence is not identified by name and there is no description of the evidence or the contents of each file. There is no information provided on a time code for the key point in each audio recording and no statement of significance.

I find that the Tenant has failed to describe and label his evidence in accordance with the rules of procedure.

The Landlord testified that she never received the digital evidence from the Tenant. She testified that she received some correspondence and audio files from the Tenant's lawyer about

a year ago, but has not received any evidence since then, and was not served any digital evidence from the Tenant since he applied for dispute resolution on April 16, 2018.

There is insufficient evidence before me to find that the Tenant served the Landlord with the 349 digital audio files after he applied for dispute resolution. Even if the Landlord had been served, the digital evidence is not identified correctly and I find it is unreasonable to expect the Landlord to listen to approximately 46 hours of recordings when there is no explanation or time stamp provided on each file.

Due to my concerns with the service of the Tenant's evidence to the respondent, and my concern with the lack of description and labelling of the evidence, I find that the Tenant has failed to provide the full particulars of the dispute.

Pursuant to section 59 of the Act, I dismiss the Tenant's application with leave to reapply.

Conclusion

The Tenant failed to identify his digital evidence in accordance with the RTB Rules of procedure. The Tenant also provided insufficient evidence that the Landlord was served with the digital evidence that the Tenant wanted to rely on in the hearing.

I find that the Tenant has failed to provide the full particulars of the dispute and pursuant to section 59 of the Act I dismiss the Tenant's application with 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 15, 2018

Residential Tenancy Branch