



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNDC FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was made on November 25, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant’s Application was made on November 23, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties provided affirmed testimony.

Preliminary Issue – Jurisdiction

While considering the evidence and submissions of the parties following the hearing, an issue concerning monetary claims limits arose.

The Landlord claimed monetary relief in the amount of \$32,589.69, which included a claim for 1 month of lost rent in the amount of \$9,450.00. The entire claim was set out in a Monetary Order Worksheet, dated June 21, 2018.

During the hearing, T.K. testified the Landlord was unable to re-rent the luxury unit for 4 months after the Tenant vacated. However, absent from the Landlord's claim was a request to retain a 3 month pre-payment of rent in the amount of \$28,350.00, made at the beginning of the tenancy. According to T.K., the pre-payment was offered by the Tenant to avoid the Landlord's normal practice of conducting credit and reference checks before entering into a tenancy agreement. It appears the Tenant was in a hurry to secure accommodations for family members. In any event, it appears the Landlord's Application was made under the belief that it was not necessary to apply to retain the pre-payment. However, properly framed, the Landlord's claim would include a request to retain the pre-payment and would total \$60,939.69.

Section 58(2) of the *Act* states:

...if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless...the claim is for an amount that is more than the monetary limit for claims under the Small Claims Act...

[Reproduced as written.]

Section 3 of the *Small Claims Act* and section 1 of the *Small Claims Court Monetary Limit Regulation* confirm the monetary limit for claims is \$35,000.00. Accordingly, the Landlord's claim, properly framed, exceeds the monetary jurisdiction of the director under the above provisions. As a result, the Landlord's Application cannot be considered as presented and is dismissed.

While the Tenant's claim does not exceed the monetary jurisdiction of the director, I find that the issue of the pre-payment is inextricably linked to the Landlord's claim and that it would be inappropriate to make this determination before the Landlord's claim is heard in a court of competent jurisdiction. Accordingly, the Tenant's Application is dismissed.

Conclusion

The Landlord's Application is dismissed.

The Tenant's Application is dismissed.

The parties are at liberty to apply for relief to the Supreme Court of BC. Alternately, the Landlord may reapply to the Residential Tenancy Branch for an amount within the jurisdiction of the director.

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 15, 2018

Residential Tenancy Branch