



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

The hearing was conducted by conference call. All named parties attended the hearing.

Preliminary Issue: Particulars of the Landlord's Application and service of the landlord's evidence

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Additionally, Rule 2.5, Rule 3.1 and Rule 3.14 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires as follows:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;

- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*].

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

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. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

The landlord testified that he was not provided a forwarding address by the tenants so he sent a copy of the application for dispute resolution to the rental unit address by registered mail on June 1, 2018. The landlord testified that the tenant's received the mail package even though they had vacated the rental unit.

The tenants acknowledged receiving the landlord's application for dispute resolution as they had their mail forwarded to them from the rental unit address. However, the tenants testified that they only received an application and notice of hearing but no accompanying documents or evidence. The tenants testified that they did not receive any monetary order worksheet detailing the specifics of the landlord's monetary claims. The tenants testified that in the absence of any details of the claims or evidence to support the claims, they could not sufficiently respond to the application. The tenant's submitted a copy of the application they received which did not include any detailed calculation of the landlord's claims or any supporting evidence.

The landlord testified that the application package sent to the tenant's included everything. When questioned if the landlord included pictures which were uploaded to the Residential Tenancy Branch online evidence portal on June 8, 2018 (7 days after the package was mailed to the tenant's) the landlord responded that he does not know if the pictures were included.

Further, at the outset of the hearing, the landlord advised that he was a surgeon and he was at work at the time of the hearing. The landlord stated he could get called into the operating room at any minute. The landlord also on one occasion stepped away from the conference briefly without any warning and on another occasion was carrying on a conversation with a third party. The landlord was cautioned that his full attention and presence would be required for the hearing to proceed. The landlord stated "it is what it is" and that it was out of his control. The landlord also did not have any of his application or details of his claim available to him at his workplace. The landlord requested that I provide him with the details of his claim and stated that he would then comment on each part of the claim. The landlord's request was refused.

I prefer the testimony of the tenants and find the tenants did not receive any correspondence from the landlord other than a copy of the application and Notice of Hearing. The landlord was not sure with regards to what documents were included with the application. The onus is on the applicant to establish that the respondent was properly served. I find the landlord failed to provide sufficient evidence to support that the landlord's evidence including a detailed calculation of the claims being made were served on the tenants.

I find the landlord's application does not comply with section 59(2) of the Act as the application served on the tenants did not include the full particulars of the dispute including a detailed calculation of any monetary claim being made. As such, I find the

tenants were prejudiced as they did not have the full details of the landlord's claim prior to submitting any evidence in response.

I dismiss the landlord's application without leave to reapply as I find it would be prejudicial to the tenants to allow the landlord to resubmit this application. The tenants took the time to attend this hearing which could not proceed in any meaningful way as the landlord did not have access to the details of his own claim nor were the tenants provided with the details of the landlords claim or the landlord's evidence.

Conclusion

The landlord's application is dismissed 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: November 06, 2018

Residential Tenancy Branch