



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AARTI INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order in the amount of \$9,000.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of their filing fee.

The tenant, an advocate for the tenant ("advocate"), a property manager for the corporate landlord ("property manager"), and a landlord agent ("agent") appeared at the teleconference hearing. The parties had the hearing process explained to them and were affirmed. The parties were also provided an opportunity to ask questions about the hearing process. Two witnesses, one for the landlord and one for the tenant were also present and provided affirmed testimony.

Preliminary and Procedural Matters

The parties agreed that the tenant DS also went by the name of MS and as a result, the tenant's name was amended in the application to DMS pursuant to section 64(3) of the *Act*.

At the outset of the hearing, the parties disputed the date in which the tenant served their documentary evidence on the landlord. The tenant testified that he personally served a man at the UPS counter on November 19, 2018 as the landlord service address is a PO Box; however, the tenant did not get the name of the man or anything from the man to support that he served the person at the UPS counter. The tenant's witness RA, testified that she was unsure of the date that the tenant served the documentary evidence package as "she was not good with dates" and testified it was likely a Wednesday or Thursday after she arrived on November 17, 2018 and that it was

“later in the week”. The landlord’s witness, RS testified that on November 22, 2018 she checked the mail at UPS as she checks the mail daily and was given an “interdepartmental mail package” that was not stamped and was advised that the mail package had been dropped off the day before which would be November 21, 2018.

The tenant filed their application on July 30, 2018 and the tenant confirmed that he vacated the rental unit on July 31, 2016 which the landlord did not dispute. The landlord agent raised the issue of the tenant being beyond the statutory deadline by failing to set out their claim sufficiently and with supporting evidence submitted on time. The landlord agent stated that the landlord expected a breakdown of the monetary claim which was not submitted.

The Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) apply and state:

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*].

(and)

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.**

[My emphasis added]

Based on the above, I find the tenant’s witness did not support that the tenant served his documentary evidence package on November 19, 2018 as stated by the tenant. In fact, I find the evidence of both witnesses supports that the evidence was more likely served on November 21, 2018 which makes the tenant’s evidence package late and less than 14 days before the hearing. In addition, the tenant did not serve the RTB until November 22, 2018.

Therefore, I excluded the tenant's documentary evidence package in full as I find the tenant failed to serve their documentary evidence in accordance with the Rules and that the tenant had ample opportunity to serve evidence as the application was filed on July 30, 2018 and that the tenant was aware of the December 4, 2018 hearing in July 2018. I find the tenant did not exercise reasonable due diligence in serving their evidence in a timely manner.

Furthermore, the parties were advised that the tenant's application was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, because the tenant's application did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the *Act* and Rule 2.5 of the Rules. Specifically, the tenant wrote the amount of \$9,000.00 and that the amount was comprised of the "equivalent of one year rent plus moving expense" but failed to set out what was the rent amount and which portion was related to moving expenses. I find that proceeding with the tenant's monetary claim at this hearing would be prejudicial to the landlord, as the absence of particulars that set out how the tenant arrived at the total amount being claimed makes it difficult, if not impossible, for the landlord to adequately prepare a response to the tenant's claim.

Both parties have the right to a fair hearing and the respondent is entitled to know the full particulars of the claim made against them at the time the applicant submits their application. Given the above, I do not grant the tenant liberty to reapply as section 60 of the *Act* applies which states:

Latest time application for dispute resolution can be made

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.**

[My emphasis added]

Neither party disputes that the tenancy ended on July 31, 2016 when the tenant vacated the rental unit. Therefore, I find the latest possible time for the tenant to apply would be July 31, 2018 and that date has already passed. As a result, **I dismiss the tenant's application without leave to reapply** as the tenant is now beyond the two-year statutory time limit.

I do not grant the filing fee as the application has been refused as noted above.

Conclusion

The tenant's application has been refused pursuant to sections 59(5)(c) and 59(2)(b) of the *Act*.

The tenant is not granted leave to reapply as noted above as section 60 of the *Act* applies given that the tenancy ended on July 31, 2016.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 4, 2018

Residential Tenancy Branch