



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNSD MNDC FF
 Landlord: MNDC MNR MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on December 18, 2018. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord attended the hearing along with her counsel. The Tenant also attended the hearing. Another individual, B.W., named on the application by the Tenant as one of the Landlords, showed up at the hearing and proceeded to identify himself as an agent of the Landlord. The Landlord stated that B.W. no longer works for her, and she did not ask him to attend. B.W. stated that he was employed as an agent for the Landlord during the material time.

After discussing with the parties in the hearing, it was difficult to determine what B.W.’s role was in the hearing, especially given that the Tenant also works with B.W., and in the middle of the hearing the Tenant asked him to be her witness. During the hearing it appeared as though B.W.’s role switched from being an agent/ex-agent for the Landlord (as named on the Tenant’s application), to a witness for the Tenant.

During the hearing, the Landlord also explained that she has an active claim with the Small Claims Court against B.W. The Landlord explained that she is suing him for breach of contract, for failing to effectively manage her rental unit, and for keeping the security deposit he retained throughout his duties as an agent for the Landlord. The Landlord also explained that she suffered a loss of rent due to B.W.’s actions.

I provided the Landlord with the opportunity to present me with the Notice of Claim to substantiate her testimony with respect the small claims dispute. The Landlord testified that she has a court date set for February 1, 2019.

After the hearing, the Landlord uploaded a copy of the Notice of Claim and I reviewed it to determine how best to proceed. I note that part of the Small Claims application is for the Landlord to recover lost rent over the months of July, August and September 2018. Another aspect of that application also includes allegations with respect to the agent's (B.W.) mishandling of the security deposits he held. The Landlord also alleges in the Small Claims proceedings that B.W., as her agent, terminated and mismanaged some tenancy contracts, costing her rental revenue.

Although the Landlord's Notice of Claim also refers to other Tenants, I still find it is substantially related to this cross-application. The Notice of Claim with the Small Claims Court refers to the Landlord's recovery of rent during July 2018- September 2018. Part of this cross application under the Residential Tenancy Act is for the Landlord's recovery of rent for the same period of time listed on the Small Claims Court Notice of Claim. I also note that part of the Tenant's application for this hearing spoke to how the Landlord improperly managed the Tenancy Agreement, and that she should be entitled to compensation. I find it is appropriate in this case to allow the proceedings at Small Claims Court to happen, prior to hearing this application, given the overlap on several of the issues (rent for the same time period, allegations about the Landlord's/B.W.'s mismanagement of the tenancy agreements and the security deposit). I find the overlap of issues was also complicated by B.W.'s unclear role in the hearing on December 18, 2018. I find it would be beneficial for both parties to have some of the Small Claims Court issues resolved prior to proceeding with an application under the Residential Tenancy Act.

I turn to the following portion of the Act:

Director's authority respecting dispute resolution proceedings

62 (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

Pursuant to section 62 of the Act, I dismiss both applications, in full, with leave to reapply, should the issues not be sufficiently remedied at the Small Claims Court in February 2019.

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: December 24, 2018

Residential Tenancy Branch