Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

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

- 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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- 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 application and service of 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 of the Residential Tenancy Branch (the "Branch") Rules of Procedure (the "Rules"), requires that 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;
- 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*].

As per Rule 3.17, evidence not provided in accordance with Rule 2.5 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Rule 3.11 provides that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

Rule 4.1 states that an applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

The landlord's application was filed on November 14, 2018 and the application package was served on the tenant on November 18, 2018. The landlord only served the tenant with the application form and notice of hearing. The landlord did not include a monetary order worksheet or any evidence with this original package. The landlord sent the evidence package to the tenant on March 4, 2019 by registered mail. The tenant testified that she did not receive this evidence package until March 11, 2019. As per section 90 of the Act, the tenant would be deemed to have received this evidence package on March 9, 2019, at the earliest. This is only 9 days before the hearing.

The landlord's original application indicated that he was seeking $6,170.16 in monetary compensation. Included with the landlord's evidence package, which was deemed served on the tenant only 9 days before the hearing, was a monetary order worksheet detailing the particulars of the claim and an amended application form indicating a new monetary claim of $11,439.83. The landlord did not file a completed amendment form with the Branch directly or through a Service BC Office as required by Rule 4.1.

The landlord testified that he did not include the particulars of the claim and the evidence package in the original application package served on the tenant as he had to spend considerable time in repairing the rental unit so there was a delay in preparing his evidence package.

I find the landlord's application does not comply with section 59(2) of the Act or Rule 2.5 as it did not include the full particulars of the dispute including a monetary order worksheet detailing the calculation of the claim. I find the landlord unreasonably

delayed the service of the particulars and evidence package on the respondent. I make this finding as a review of the repair invoices as well as labour hours submitted as evidence by the landlord reveal that these items were being claimed for a period prior to December 31, 2018. However, the landlord still waited until March 4, 2019 to serve this evidence on the tenant. As a result the tenant only received these documents 9 days prior to the hearing. I find that this evidence was not "new" and the landlord had the opportunity to serve the tenant in a timely manner. I find that accepting this application without particulars and late evidence severely prejudiced the tenant's ability to respond to the application. Similarly, I find that allowing the landlord with an opportunity to reapply for this dispute would unreasonable prejudice the tenant who took the time to attend this hearing.

The landlord's application is therefore dismissed without leave to reapply.

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: March 18, 2019

Residential Tenancy Branch