Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on April 30, 2019. The Tenant applied for the following, pursuant to the *Residential Tenancy Act (*the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Tenant acknowledged receiving the Landlords' evidence on April 20, 2019. The Landlords stated they got the Notice of Hearing back in January 2019, but it had no evidence along with it and only had a very brief blurb indicating what the Tenant was seeking. The Landlords stated they got the Tenant's evidence package (including a USB stick) on April 12, 2019.

At the end of the hearing, on April 30, 2019, I expressed to the parties that we would need to meet again to finish going through the Tenant's application and evidence (as there was insufficient time in this hearing). However, after considering the totality of the testimony and evidence presented thus far, I find I have enough before me to render a decision. As such, an adjournment is not necessary for the reasons below.

I note that at several points throughout the hearing, the Landlords took issue with the Tenant's application, in that they did not really understand what she was applying for until days before the hearing (sparse/unclear details on her application). The Landlords expressed concern over how long it took the Tenant to submit this application. The Landlords stated that the Tenant filed her application on the last day possible (exactly 2

years after the tenancy ended). The Landlords also expressed concern over how the Tenant filed her application and laid out her evidence. The Landlords stated that on the Tenant's application, she listed different items, for different amounts than what she put on her monetary order worksheet and in her written submissions. The Landlords stated that since the Tenant waited until the last possible time to give them her evidence, they were blindsided by what the Tenant was seeking, including her claim for loss of quiet enjoyment. The Landlord expressed that it was difficult to prepare for this hearing (for a tenancy that ended well over 2 years ago) because of how the Tenant laid out her application and then changed it.

Although I acknowledge that the Tenant filed her application for dispute resolution on the last day possible with our office, based on the 2 year limitation period after the end of the tenancy, I note she was entitled to do so. I find the Tenant was legally entitled to submit this application, as it was made within the acceptable time period. That being said, and given how much time has passed, I find it likely that it would be more difficult to prepare for this hearing than it otherwise would be, had the tenancy ended more recently. With this in mind, it is paramount to file the application in accordance with the Rules of Procedure, and the Act, so that both sides have a fair opportunity to prepare for the case, and respond accordingly.

Having reviewed this application, and after having discussed the Landlords' concerns at the hearing, I note the Tenant's application listed the following items:

> "two month of rent $1800.00 of $900 each one -Fortis Gas $1833.00 -Cleaning Expenses $337.00 -parking space $25 x 39 Months= $975"

The Tenant's application did not elaborate or explain any further. The Tenant subsequently served her Notice of Hearing to the Landlord indicating she was seeking the items above, totalling $4,945.00 in total. The application contained the above language, verbatim. I note the Landlords prepared a written response to some of these exact items around a week prior to this hearing and submitted it into evidence. I further note many of the tenant's items on her initial application were substantially altered by the Tenant between the time she applied, served the Landlords with the Notice of Hearing, and the time she attended the hearing. I also note the Tenant did not file an amendment to reflect the additional items and amounts she sought at the hearing.

The Tenant, as part of her evidence package submitted around 2 weeks before this hearing, provided a worksheet itemizing 9, mostly different things. More specifically, she indicated she was seeking $119.13 for cleaning expenses (2 items), $126.54 for printing

costs, $107.49 for two space heaters she bought, $3,000.00 for loss of quiet enjoyment, $975.00 for refund of her parking costs, plus $2,000.89 for some Fortis BC bills, totalling $7,229.00.

I note many of these items were absent from the initial application, and/or had substantially modified amounts and totals. I also note the Tenant failed to file an amendment, in accordance with the Rules of Procedure, to update the items and amounts she was seeking. I find the manner in which the Tenant laid out her application was confusing and lacked sufficient clarity. I find this confusion was echoed by the Landlords' testimony, and the fact they submitted written responses and evidence speaking to the Tenant's initial application, which she substantially modified prior to the hearing. I find this was prejudicial to the Landlords. The Tenants initial application and her subsequent evidence lacked internal consistency, which made it difficult to respond to, and I also find this issue was exacerbated by waiting until a matter of days before her evidentiary service deadlines (which contained her different items and amounts). I note the Tenant had 2 years since the end of her tenancy, and over 4 months after applying to our office to prepare, in a clear and understandable manner, her claim and her evidence.

I note the following portion of the Rules of Procedure:

> ***Rule 3 – Serving the application and submitting and exchanging evidence***
> ***3.11 Unreasonable delay***
>
> *Evidence must be served and submitted as soon as reasonably possible.*

Given that most, if not all, of the Tenant's evidence was evidence she had in her possession for years, it is not sufficiently clear why she delayed serving it to the Landlord for so long.

Furthermore, I note the following portion of the Act:

Section 59 (2) An application for dispute resolution must
(a) be in the applicable approved form,
(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
(c) be accompanied by the fee prescribed in the regulations.

[…]

(5) The director may refuse to accept an application for dispute resolution if:

[…]

(c) the application does not comply with subsection (2).

As laid out above, I find the Tenant's application did not sufficiently disclose the full particulars of her dispute. It only laid out one sentence with some vague items and amounts, which were not an accurate reflection of what she would pursue at the hearing. The Landlord attempted to respond to these items but, as stated above, struggled to do so effectively, as the initial application (particulars of) were not very clear, nor were they reflective of the items she would seek at the hearing with her accompanying evidence. Given the totality of the situation, I refuse to accept her application. The Tenant's application is dismissed, without leave.

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: May 2, 2019

Residential Tenancy Branch