



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND 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 compensation for damage to the rental unit and/or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- 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 Landlord's Application and Submitting and Exchanging of Evidence

The landlord filed the original application on January 14, 2019. The tenant confirmed service of the landlord's original application on or about this date. On April 23, 2019, exactly 14 days prior to the hearing date, the landlord filed an amended application by which he increased the amount claimed from just under \$17,000.00 to \$30,000.00. At this same time the landlord served a large amount of evidence contained on a USB stick to both the Residential Tenancy Branch (the "Branch") and the tenant. The evidence contains numerous pictures, videos and other documentary evidence and submissions.

The tenant testified that he did receive some documentary evidence at the time of being served with the original application but it mainly consisted of Residential Tenancy Branch documents, mostly irrelevant text message communications between the parties and some pictures. The landlord confirmed that the bulk of the evidence and updated claim was served on April 23, 2019. Neither party could distinctly explain which evidence was served at the time of service of the original application. The tenant

testified that the original application did not include a monetary order worksheet detailing the landlord's monetary claim. The landlord confirmed that a monetary order worksheet was submitted only with the amended application. The landlord did not submit or serve a *Digital Evidence Details form* (RTB-43) on either the Branch or the tenant.

When asked to explain why the evidence was not served at the time of serving the original application or within a reasonable period afterwards, the landlord insisted that the evidence and amendment was submitted in accordance with the Branch Rules of Procedure 14 days before the hearing date and that this should not be an issue. The landlord then stated that he could not provide it any sooner due to the extent of the damage caused by the tenant. The landlord stated that he did not know the extent of the damage nor could he estimate it until he started to pull back drywall from the walls. The landlord submits that he has been performing ongoing repairs since the end of the tenancy on December 31, 2018 and it has taken a long time due to the extent of the damage and since he is doing the repair work himself.

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

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.

As per Rule 3.14, at a minimum, evidence that is not submitted at the time of the application 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.

The following additional requirements also apply under Rule 3:

- Parties who submit digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must provide the information required under Rule 3.10.1 using *Digital Evidence Details* (form RTB-43).
- Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using *Digital Evidence Details* (form RTB-43).

Under Rule 4 Amended applications and supporting evidence should be submitted to the Branch and served on the respondent as soon as possible and in any event must be received by the respondent not less than 14 days before the hearing.

Lastly, the calculation of "Days" is defined in the Rules as follows:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

I find the landlord did not comply with section 59(2) of the Act and Rule 2.5 as the tenant was not provided with the full particulars of the landlord's claim, specifically a monetary order worksheet providing a detailed calculation of the monetary claim, nor was he served with all the documentary and digital evidence the landlord intended to rely on in the proceeding, at the time of service of the original application. The landlord also did not utilize form RTB-43 to provide details of the digital evidence.

I find the landlord unreasonably delayed the service of the complete evidence package including the monetary order worksheet and Amended application. The tenant was served with the landlord's original application on or about January 14, 2019. The tenancy ended on December 31, 2018. The landlord's amendment and evidence package was served to the tenant on April 23, 2019. The amendment sought to almost double the original claim from \$17,000 to \$35,000 and the evidence provided to support the claim was in the form of a very large digital evidence dump. I do not accept the landlord's explanation that the extent of the damage prevented him from submitting the evidence any sooner than 14 days prior to the hearing date. The bulk of the evidence submitted by the landlord is in the form of picture and video evidence to support the damage which clearly should have been available to the landlord soon after the end of

the tenancy. The landlord also had over 4 months to perform repair work and submit any receipts or invoices for expenses incurred over this period or at the very least provide estimates of the work to be done. I find the landlord willfully delayed the service of the amendment and evidence on the tenant. This was evident as the landlord insisted he was within the requirements of the Branch to serve the evidence and amendment exactly 14 days prior to the hearing. The not less than 14 days before the hearing is a minimum requirement if the party can show why they were not able to meet the requirements of serving evidence at the time of filing or serving an amendment as soon as possible. I find that by filing an amendment to significantly increase the amount claimed and by dumping a large amount of digital evidence on the tenant exactly 14 days before the hearing date, the landlord attempted to ambush the tenant. I find that in doing so, the tenant's ability to provide any meaningful response to the landlord's claim has been severely prejudiced.

In either event, contrary to the landlord's insistent that he met the 14 day rule, I note that the requirement is to serve an amendment and supporting evidence not less than 14 days before the hearing. As per the definition of "days", excluding the first and last day, the latest date of service was April 22, 2019 in order to meet the not less than 14 days requirement before the May 7, 2019 hearing date. The landlord did not serve the tenant until April 23, 2019.

For the reasons provided above, I dismiss the landlord's application in its entirety without leave to reapply.

The landlord continues to hold a security deposit in the amount of \$975.00. As the landlord's application to retain the security deposit has been dismissed, the full amount of the security deposit is to be returned to the tenant forthwith.

The tenant is granted a Monetary Order in the amount of \$975.00.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$975.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 09, 2019

Residential Tenancy Branch