



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, LRE, OLC, PSF, MNDCT

Introduction

This hearing was scheduled to deal with a tenant's application to dispute a rent increase; to suspend or set conditions on the landlord's right to enter the rental unit; to obtain orders for the landlord to comply with the Act, regulations or tenancy agreement; to order the landlord to provide services or facilities required under the tenancy agreement or the law; and, for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. The tenant subsequently submitted an Amendment to change his service address and change the monetary claim.

Both parties appeared at the hearing.

At the outset of the hearing, I explored service of hearing documents. The parties were in agreement that the tenant's proceeding package was sent to the landlord by registered mail within three days of filing. The package sent by registered mail did not include any evidence or a detailed monetary calculation.

The tenant submitted that he placed the Amendments, Monetary Order worksheet, and evidence in the mail slot at the residential property in the evening of June 7, 2019. The landlord acknowledged finding this package approximately 7 to 10 days before today's date.

The Residential Tenancy Branch received a submission from the landlord on June 19, 2019. The landlord stated that he did not serve his submission to the tenant because he thought there was insufficient time to do so since he received the tenant's new service address only 7 to 10 days ago.

Both parties confirmed that the tenant vacated the property on May 31, 2019. As such, I found that the urgent matters identified on the tenant's application were moot and the only outstanding issue to resolve was monetary.

I noted that the landlord's service address was the same as the rental unit address and I determined it necessary to explore whether the parties had a landlord/tenant relationship to which the *Residential Tenancy Act* applies. I posed questions to each party with a view to making such a determination. Both parties were in agreement that the landlord is actually a tenant who rents the entire house from the owner of the house while residing in the separate basement suite and rents out the separate upper suite to sub-tenants. The parties, however, provided differing positions as to whether the landlord had given up possession of the entire upper rental unit to sub-tenants and was lawfully or unlawfully continuing to use the living room and kitchen in the upper unit. The tenant was of the position the Act applies; however, the landlord questioned whether the Act applied and it was apparent he was unprepared that jurisdiction would be an issue to determine at this hearing.

Since the tenant failed to provide a detailed monetary calculation with the original hearing package served upon the landlord, as required under Rules 2.5 and 3.1 of the Rules of Procedure; the tenant failed to serve the Amendment in accordance with section 89 of the Act, as required under Rule 4.6 of the Rules of Procedure, and, considering the parties had not come to the hearing prepared to make submissions concerning jurisdiction, I declined to proceed with the tenant's monetary claim and I dismissed the tenant's monetary claims with leave to reapply.

I encouraged the parties to try to resolve their dispute between themselves but informed the parties that if that were not possible the parties may seek dispute resolution in the appropriate forum. I encouraged both parties to *familiarize themselves with Residential Tenancy Policy Guideline 19: Assignment and Sublet* and if another application is made to the Residential Tenancy Branch the parties should be prepared to make submissions and provide evidence as to whether their living arrangement falls under the *Residential Tenancy Act*.

I also cautioned the landlord that in the event the Act applies, the landlord has only 15 days from the date he received the tenant's forwarding address to either refund the security deposit to the tenant, make a claim against it by filing a Landlord's Application for Dispute Resolution, or obtain the tenant's written consent to make deductions from the deposit. If the landlord fails to comply with the Act with respect to administering the security deposit, the security deposit may be doubled. As a matter of record, the tenant

sought confirmation that the landlord has received his service address. The landlord confirmed receipt of the tenant's new service address approximately 7 to 10 days before the date of this hearing.

Conclusion

The tenant's monetary claims against the landlord are dismissed with leave to reapply. The other issues raised in the tenant's application were found to be moot since the tenancy has ended.

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: June 25, 2019

Residential Tenancy Branch