Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of $1200 for double the security deposit.

The Landlord failed to appear at the scheduled start of the hearing which was 1:30 p.m. on June 6, 2019. The Tenant respondent was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

The tenant filed the Application for Dispute Resolution of March 28, 2019. The witness for the tenant testified he gave the documents to a person at the landlord's office on May 22, 2019 along with other evidence.

Issues to be Decided

The issue to be decided is whether the tenant is entitled to the return of double the security deposit/pet deposit?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on April 17, 2017. The tenancy ended on August 1, 2018. The rent was $1355 per month payable in advance on the first day of each month. The Tenant paid a security deposit of $600 at the start of the tenancy.

The landlord obtained a monetary order against the tenant in a hearing held on December 18, 2018 in the absence of the Tenant. The arbitrator ordered that the tenant pay the landlord $2565. The order further stated the landlord could retain the security deposit thus reducing the amount that was owed.

The tenant applied for review and a new hearing was set for February 12, 2019. In a decision dated March 25, 2019 the arbitrator ordered that the December 12, 2018 be overturned and that application of the landlord be dismissed without leave to re-apply.

The tenant filed an Application for Dispute Resolution seeking a monetary order for double the security deposit in the sum of $1200 on March 28, 2019. However, the tenant failed to serve the landlord within 3 days as required by the Act. The tenant's witness testified her served a representative of the landlord on May 21, 2019 which is approximately 7 weeks after the tenant received the Application for Dispute Resolution from the Registry. he tenant testified she was not aware of this requirement that she must serve within 3 days. She testified she talked to an information officer at the Residential Tenancy Branch who told her that all documents must be served 2 weeks prior to the hearing. She assumed that include the Application for Dispute Resolution.

Analysis:
Section 59(3) of the Residential Tenancy Act provides as follows:

> Starting proceedings
> 59 (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution **must** give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 59(3) says that an applicant "must" serve the respondent with the Application for Dispute Resolution within 3 days of making it or within a different time period specified by the director. The Interpretation Act, RSBC 1996, C. 29; provides that in any enactment the use of the term "must" is to be construed as imperative. That means compliance is "mandatory." The tenant did not obtain an order from the director which permits service after the 3 day period.

I determined the purpose of section 59(3) requiring timely service on an application for dispute resolution and the notice of hearing letter is to ensure that a respondent has

timely knowledge of the proceeding and is given a fair opportunity to preserve evidence and to prepare.

In some situations an arbitrator can extend the three-day time limit. Section 66(1) provides as follows:

> Director's orders: changing time limits
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> 66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, **other than as provided by section 59 (3) [starting proceedings]** or 81 (4) [decision on application for review].

As can be seen from the portion of the extract emphasized in bold, the three-day service period imposed by s. 59(3) is specifically excluded from the arbitrator's general power to extend time limits. I determined that I cannot extend the three day time limit to encompass service after the expiry of the time period. .

Further, I determined that even if I had the authority to apply section 66(1) to extend the time limits this is not an appropriate case to do so because the Tenant has failed to establish there are exceptional circumstances.

Policy Guideline #36 includes the following:

> **Exceptional Circumstances**
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> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.
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> Some examples of what might not be considered "exceptional" circumstances include:
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> …
>
> - the party did not know the applicable law or procedure

- the party was not paying attention to the correct procedure

…

The explanation of the tenant that she was not aware of the requirement to serve within 3 days does not amount to exceptional circumstances. The Fact Sheet which accompanies the materials given to the tenant clearly state that service within 3 days is required.

After consideration of the Act as a whole, I determined that the failure to serve a respondent within the three day period is a failure to comply with a mandatory statutory requirement essential to the dispute Resolution process.

Conclusion:

As a result I order that the Application of the Tenant be dismissed with liberty to re-apply.

This decision is final and binding on the parties.

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 06, 2019

Residential Tenancy Branch