



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 28, 2019 (the “Application”). The Tenants sought compensation for monetary loss or other money owed.

The Tenants filed an amendment June 06, 2019 correcting their address and correcting the amount claimed to \$16,800.00.

The Tenants appeared at the hearing. Nobody appeared for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. The Tenants provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and Tenants’ evidence.

Tenant B.G. testified that the hearing package was sent to the Landlord June 06, 2019 by registered mail to the address on a Two Month Notice served on the Tenants and dated October 24, 2018. He provided Tracking Number 1. I looked this up on the Canada Post website which shows the package was delivered and signed for by the Landlord June 19, 2019. Tenant B.G. advised that the Tenants’ evidence was included in the package, other than the video evidence submitted.

I advised the Tenants that the Rules of Procedure (the “Rules”) require evidence to be served on the other party. I told the Tenants I would consider admissibility of the video evidence. I heard the Tenants on whether the video evidence should be admitted or excluded. Tenant B.G. said it was a mistake that the video evidence was not served and that he must have missed this requirement.

Rule 3.14 of the Rules states:

...documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent...not less than 14 days before the hearing...

Rule 3.17 of the Rules states:

Evidence not provided to the other party...in accordance with...Rules...3.14...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...

I found the Tenants did not comply with rule 3.14 of the Rules in relation to the video evidence as it was not served on the Landlord. I determined the video evidence should be excluded. I did not find the Tenants' reasons for not serving the evidence sufficient to justify admitting it. As acknowledged by Tenant B.G., the video evidence is important evidence for the Tenants' Application. The video evidence is not evidence the Landlord would have been aware of regardless of service. The Landlord was not present at the hearing to agree to the video evidence being admitted. In the circumstances, I found it would be prejudicial to the Landlord to admit evidence not served on him. I told the Tenants the video evidence would be excluded meaning I would not consider it.

Tenant B.G. asked if something could be done about the video evidence not being served. I told the Tenants they could proceed with the hearing with the video evidence excluded or withdraw the Application. Tenant B.G. raised concerns about the timing of the Application. I told the Tenants the limitation period for Applications for Dispute Resolution is two years from the end of the tenancy pursuant to section 60 of the *Residential Tenancy Act*. The Tenants advised they wished to withdraw the Application.

I allowed the Tenants to withdraw the Application. The hearing had proceeded for 27 minutes at this point. The Landlord had not called into the hearing. I did not find there was prejudice to the Landlord in allowing the Tenants to withdraw the Application. The Application is withdrawn at the request of the Tenants.

Conclusion

The Application is withdrawn at the request of the Tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 10, 2019

Residential Tenancy Branch