Dispute Resolution Services

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: Filing and service of landlord's amended application and evidence

The landlord filed the original application on June 18, 2019. The landlord was required to serve this application by June 24, 2019. On June 24, 2019, the landlord attempted to serve the tenants by registered mail to a forwarding address obtained by the landlord from a court bailiff. The registered mail was returned unclaimed. The landlord wanted to ensure the tenants received the application and notice of hearing so on August 8, 2019 the landlord applied for and was granted a substitute service order permitting him to serve the tenants by e-mail. The landlord served the tenant with his original application on August 12, 2019 by e-mail which was confirmed received by the tenant. The landlord's original application was for monetary compensation for unpaid utilities bills in the amount of $736.59. There was no mention of any other pending claims in the landlord's original application nor was any evidence served on the tenant at the time of serving the original application.

On September 16, 2019, only 15 days prior to the hearing date, the landlord filed an amended application by which he increased the amount claimed to $10,166.47

comprised of various claims for loss relating to the end of the tenancy plus damages. The landlord sent a copy of the amended application and supporting evidence by e-mail to the tenant on this same date. The tenant acknowledged receiving an e-mail from the landlord on September 17, 2019. The tenant testified that the e-mail was confusing, and she was not sure what it was as it contained "a bunch of pictures and a monetary thing". The landlord submitted a screenshot of the email sent on September 16, 2019 as proof of service. The e-mail is titled Monetary Order and Evidence and the screenshot contains the statement "please see attached PDF for order and evidence" followed by a picture of what appears to be a garage labelled 2d.

When asked to explain why the amended application and supporting evidence was not served at the time of serving the original application or within a reasonable period afterwards, the landlord stated he was still assessing the damage at the time of the original filing and at the time he was only sure of the claim for the unpaid utilities. The landlord submits that he waited until all the work was done and submitted the entire claim together in one package. The landlord referred to one invoice for repair work which he states he just received as recent as September 13, 2019.

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 <u>at the same time</u> 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.

Under Rule 4 of the Rules, 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.

I find the landlord unreasonably delayed the service of his complete evidence package including the updated monetary order worksheet and Amended application. The landlord's original application was filed June 18, 2019. The tenancy ended on June 21, 2019. The landlord waited a full 3 months to file an amendment to his original application and serve the tenant with the evidence he was relying on in support of this amended claim. This was not a case of a minor amendment to a monetary amount but rather the landlord brought an entire new claim for damages and losses amounting to over $10,000.00 from the original claim of $736.59. I do not accept the landlord's explanation that the time to perform all the repairs prevented him from submitting the amended application and evidence any sooner than 14 days prior to the hearing date.

The bulk of the landlord's amended claim is for costs incurred to hire a bailiff at the end of the tenancy as well as unpaid rent. The landlord should have been able to make this claim soon after these costs or losses were incurred. It would have been more appropriate for the landlord to make an amendment within a reasonable time and then add any subsequently obtained evidence or claims later if necessary. The landlord could also have just waited until all the repair work was complete and filed an application for costs associated with damages separate from the claim for unpaid rent, utilities and bailiffs' fees etc.

I find the landlord willfully delayed the service of the amendment and supporting evidence on the tenant. I find that by serving an amendment on the tenant to add entirely new claims and significantly increase the amount sought only 14 days prior to the hearing date, the landlord severely prejudiced the tenant's ability to respond. Further, the landlord's e-mail to the tenant did not clearly indicate that the landlord had filed an amended application.

For the reasons provided above, I advised the landlord that I would not be accepting his amended application and that he would have to file a new application for the amended parts of his application.

The landlord was not pleased with my decision and advised that he did not wish to proceed with only the originally filed application. The landlord advised he was withdrawing the application in its entirety.

The landlord continues to hold a security deposit in the amount of $1400.00 and a pet deposit in the amount of $1000.00. As it was not clear that the tenant herself had provided a forwarding address to the landlord, I make no order for the landlord to return

the deposits at this time. The tenant has one year after the end of the tenancy to provide a forwarding address in writing to the landlord. If a forwarding address is not provided within one year, the tenant forfeits her right to claim a return of the deposits. If the tenant provides a forwarding address, in writing, the landlord has 15 days from the date the address is provided, to either return the deposits or file a claim against the deposits.

Conclusion

The landlord's application is withdrawn.

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: October 01, 2019

Residential Tenancy Branch