



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALL STAR DEVELOPMENT LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL MNDL MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$10,399 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:55 pm in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlord's agent ("**PA**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that PA and I were the only ones who had called into this teleconference.

At the outset of the hearing, PA advised me that another agent of the landlord's (the "**Other Agent**") was supposed to attend this hearing, but was unable to, due to a delay in his flight. PA testified that he would be able to proceed with the application, as he had familiarized himself with file materials.

Preliminary Issue – Amendment and Service of Documents

The initial application listed the tenants' address for service as 2851 [street name redacted] (the "**Former Address**"). However, on September 4, 2019, the landlord amended the application to correct an error in the address for service and changed it to 2861 [street name redacted] (the "**New Address**").

The landlord submitted into evidence copies of photos of envelopes sent by registered mail to the Former Address, which PA testified contained the dispute resolution proceeding package and supporting evidence.

PA could not, however, direct me to any documentary evidence which showed that these documents were served to the tenants at the New Address. PA testified that, following the amendment, he sent the tenants a copy of the Amendment to an Application for Dispute Resolution form and a revised Notice of Dispute Resolution Proceeding package to the tenants at the New Address by registered mail. However, he testified that this mailing did not include any of the documentary evidence the landlord intended to rely on at the hearing. He testified that he was unsure if the Other Agent had mailed the documentary evidence to the tenants at the New Address. He stated that it was possible that this was done, but that he could not locate any record of it, and that the Other Agent would be able to give accurate testimony on this point.

As such, I am not satisfied that the tenants were served with the documentary evidence the landlord intends on relying on at this hearing. As such, the documentary evidence cannot be admitted to this hearing.

In ordinary circumstances, I would proceed with the hearing today and not permit the landlord to rely on any of the documents submitted, which likely would result in an unsuccessful claim for the landlord, given the claim's nature.

However, I accept PA's testimony that the Other Agent's inability to attend this hearing was due to factors beyond the landlord's control. As such, I find that it is more appropriate to dismiss the landlord's application with leave to reapply.

PA sought an adjournment of the hearing, rather than a dismissal. Rule of Procedure 7.9 states:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

These factors are generally to be considered when deciding between proceeding with the hearing and granting an adjournment. This is not the case here, as such, some of these factors (#2 and #4) are not relevant.

PA argued that an adjournment is appropriate as it would avoid the need for the landlord to reserve documents on the tenants. This is not true, however. Even if an adjournment is granted, the landlord would still be required to serve the documentary evidence (as well as a copy of my interim decision and the notice of reconvened hearing) on the tenants at the New Address. I do not therefore find PA's argument to be persuasive.

I find that the need for an adjournment is caused by the neglect of the landlord, as the inability for PA to confirm whether the tenants were served with the documentary evidence at the New Address is not due to the flight delay for the Other Agent, but rather due to inadequate record keeping on the part of the landlord. The manner of record keeping is within the landlord's control, and a record of the landlord's service of evidence should be contained in the records.

I find that if the claim is dismissed with leave to reapply, the prejudice to the landlord is minimal. A dismissal will not prevent the landlord from advancing its claim against the tenant. The claim will be delayed, but I have no basis to think that this is overly prejudicial to the landlord.

I order that the landlord's application is dismissed, with leave to reapply.

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: November 21, 2019

Residential Tenancy Branch