



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC 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 recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord testified that on December 9, 2019, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail to the tenant's forwarding address. The landlord provided a registered mail tracking number and receipt in support of service. The landlord testified he also sent a copy to the tenant by e-mail on December 4, 2019 and again on April 11, 2020. In a decision dated December 20, 2019, the landlord's substitute service application to serve the tenant via e-mail was approved.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue: Dividing claim

The landlord originally filed an application relating to this tenancy on January 31, 2018. The tenancy also ended on this same date. In this previous application, the landlord was seeking monetary compensation for various damage to the rental unit at the end of the tenancy and authorization to retain the tenant's security deposit. In a decision dated September 20, 2018, the landlord's application for monetary compensation was dismissed in its entirety and the landlord was ordered to return the tenant's security deposit plus double the amount as penalty.

This application was filed on November 28, 2019, approximately 14 months after the previous decision and 22 months after the end of the tenancy. In this application, the landlord is seeking monetary compensation in the amount of \$3500.00 for the tenant breaking the lease, \$2200.00 for one month loss of rent and \$2200.00 for a management fee to find a new tenant.

The landlord submits this claim is not related to the previous as that was related to damages. The landlord stated this claim was filed separately as the costs were not finalized at the time of the previous claim and the landlord had to wait until such time that the costs were finalized. The landlord submits he had to obtain legal advice on what costs he could recover etc.

Rule 2.9 of the Residential Tenancy Branch (the "Branch") Rules of Procedure (the "Rules"), requires that an applicant may not divide a claim.

I find the claims raised by the landlord in this application all could and should have been raised in the landlord's previous application. Both applications involve the landlord seeking monetary compensation stemming from the same action which is the ending of the tenancy, one for damages left at the end of the tenancy and the other for compensation as a result of breaking the lease. I do not accept the landlord's position that these matters are completely separate and could not have been combined into one action. The landlord ought to have known the costs claimed in this action soon after the tenant allegedly broke the lease. The hearing for the original application was not held until September 7, 2018, over 7 months after the initial application was filed. The landlord could have easily amended his original application anytime during this 7-month period if he had not known the extent of his losses at the time of filing. The landlord is seeking only 1 month of lost rent so I see no reason why the landlord would have to wait over 22 months after the end of the tenancy to file for such. The landlord also

submitted to documentary evidence in support of his argument that he was obtaining legal advice on the matter.

For the reasons provided above, I find the landlord is dividing a claim and attempting to relitigate a matter that could have been included in the previous litigation. I dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

The landlord's application is dismissed in its entirety without 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: May 19, 2020

Residential Tenancy Branch