



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD MNDCT FFT

Introduction

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

- a monetary order for compensation, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application.

Preliminary Issue—Amendment to Tenant's Application for Compensation or Money Owed

Although the tenant had applied for a monetary order of \$9,160.00 in their initial claim for losses or money owed associated with this tenancy, since they applied they have amended the monetary amounts to include additional monetary claims that were not included in the original application.

The tenant confirmed that prior to filing the Monetary Worksheet dated May 3, 2020, she had not submitted any Monetary Worksheets detailing her claim. The tenant

testified that the landlord was previously served her documents as part of a previous claim, and was aware of the claims she was making.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

It was undisputed that the tenant had failed to provided the landlord or the RTB with an Amendment to her Application for Dispute Resolution. The landlord testified that he had not received a monetary worksheet prior to the one dated May 3, 2020.

No amendments were received in accordance with RTB Rule 4.6. These rules ensure that a respondent is aware of the scope of the hearing and are prepared to respond, if they chose to do so. While the respondent may have been served with identical or similar documents as part of a previous hearing, the respondent was not made aware that the tenant would be seeking the specific amounts requested on the monetary worksheet dated May 3, 2020 prior to being served the Monetary Worksheet. I find that the amounts have been changed by the tenant since she had filed her original application on December 17, 2019, and that the tenant was unable to define what specific changes were made to the individual amounts in her monetary claim.

I find that prior to the submission of the Monetary Worksheet dated May 3, 2020, the tenant failed to provide the landlord with a clear breakdown of the monetary orders requested. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I do not allow the tenant's amended

monetary claim as summarized in the Monetary Worksheet, and I dismiss the tenant's application for monetary compensation or money owed for this tenancy with leave to reapply. The tenant remains at liberty to make a formal application for a monetary award for damage or losses arising out of this tenancy. Liberty to reapply is not an extension of any applicable limitation period.

Preliminary Issue-Tenant's Forwarding Address

During the hearing, the tenant confirmed that the landlord was not provided with her forwarding address in writing.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

In this case the tenant has applied for the return of the security deposit, but admitted in the hearing that the landlord was not provided with her forwarding address in writing. As I am not satisfied that the tenant has demonstrated provision of her forwarding address to the landlord in writing, I dismiss the tenant's application with leave to reapply.

As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing. Liberty to reapply is not an extension of any applicable limitation period.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply.

The remainder of the tenant's application is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable limitation period.

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 21, 2020

Residential Tenancy Branch