



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNR, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, cost of repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord represented herself. The tenants were represented by their agent.

As both parties were in attendance, I confirmed service of documents. The tenant's agent stated that the tenant was not served with the landlord's evidence. The landlord testified that she served the tenant with the notice of this hearing by email, which was accepted by the tenant. The landlord stated that shortly after, the tenant blocked the landlord's emails and since the tenant had not provided a forwarding address, the landlord was unable to serve the tenant with evidence to support her claim of \$34,622.80.

At the time of the hearing, there was no documentary evidence before me to support the landlord's claim. The landlord confirmed that she did not serve the tenant with her evidence as she was unable to locate him after he moved out, without giving her a forwarding address. I asked the tenant's agent to provide the landlord with a forwarding address and he replied, "*not at this time*".

The landlord stated that based on information and instructions provided to her by an information officer of the Residential Tenancy Branch, she filed she sent her evidence by email but as stated above the tenant blocked receipt of the landlord's emails.

At the time of the hearing, there was no documentary evidence before me. The landlord relied upon this evidence to support her monetary claim.

The landlord stated that the extent of the damage to the rental unit was severe and therefore it would take time to complete the restoration of the unit. The landlord stated that a further loss of income would take her claim to over \$35,000.00 which is outside the jurisdiction of the *Residential Tenancy Act*. The landlord indicated that she intended to take her claim to another court if it exceeded the limitation of the *Act*. The landlord requested that her application be dismissed with leave to reapply.

Analysis

Rule 3.6(a) of the *Residential Tenancy Branch Rules of Procedure* states that an applicant who intends to present and rely upon other physical evidence at the dispute resolution proceeding must provide a description of the evidence to the Residential Tenancy Branch and serve the respondent at least five (5) business days before the dispute resolution proceeding.

Since the tenant was not served with the landlord's evidence, even if this evidence was before me, I am unable to use this evidence in the making of a decision to award the landlord a monetary order for her claim, as the acceptance of the evidence would prejudice the other party and result in a breach of the principles of natural justice. Therefore, I am dismissing the landlord's application with leave to reapply.

Conclusion

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: June 25, 2020

Residential Tenancy Branch