



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAPE LIVING CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

An Agent for the Landlord (the “Landlord”), the Tenant and the Tenant’s advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to monetary compensation for losses under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the cost of the filing fee?

Preliminary Matter – Late Evidence

At the outset of the hearing, it was noted by this Arbitrator that the Landlord had submitted her evidence two days before the hearing. When asked why the Landlord’s

documentary evidence was late, the Landlord testified that it had been due to COVID-19 pandemic.

The Landlord testified that they had been laid off in April 2020 due to the pandemic and had just returned to work three weeks ago. The Landlord testified that they were the only agent in the Landlord's office who had been working this file; as they were absent, the file sat unworked during their lay off period.

The Landlord offered no explanation as to why another agent of the Landlord could not have worked the file in their absence, or how this application was filed in May 2020, during their lay off period, if no one else was able to work this file in their absence.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure states the following:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I have reviewed the Landlord's application, and I find that the Landlord had 112 days to prepare and submit evidence, within the deadline, in support of their application. I find that this was sufficient time for the Landlord to prepare their cases and served all relevant evidence to the Tenant, the respondent, and the Residential Tenancy Branch in accordance with the Rules of Procedure.

I acknowledge the Landlord's argument that the preparation of their claim had been delayed due to the COVID-19; however, I find that the claim that this particular agent being laid off from this Landlord's office to be insufficient justification for allowing the submission of evidence, two days before a hearing.

I find that it would be procedurally unfair to the Tenant to allow evidence submitted after the applicant evidence submission cut date of September 3, 2020, into these proceedings.

Therefore, I will not consider any evidence submitted into these proceedings, by the applicant, after September 3, 2020.

Preliminary Matter – Missing Details of Monetary Claim

At the outset of these proceedings, it was noted that the Landlords had not included a monetary worksheet with their application for Dispute Resolution. The Landlord testified that they had included their monetary worksheet with their evidence package submitted on September 15, 2020, two days before this hearing.

The Tenant testified that they were not provided with sufficient time to review the details of this financial claim or prepare their defence, due to the late service of the Landlord's evidence.

I find that it would be procedurally unfair to the Tenant to continue in this proceeding when they have not been provided with sufficient time to review and prepare a response to the monetary claim being made against them.

As the applicant, the Landlord had 112 days to prepare for these proceedings in accordance with the Rules of Procedure, and they failed to meet this requirement for these proceedings; I find it appropriate to dismiss the Landlord's claim without leave to reapply.

Conclusion

I dismiss the Landlord's Application for Dispute Resolution 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: September 17, 2020

Residential Tenancy Branch