



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord was served with the tenant's application for dispute resolution via email sometime between May 12th, 2020 and June 1, 2020. I find that the landlord was served in accordance with the March 30, 2020 Director's Order.

Preliminary Issue- Amendment

The tenant testified that in addition to the claim made in her application for dispute resolution, the tenant is seeking the return of double the security deposit.

Section 4.2 of the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that the landlord could not reasonably have anticipated that the tenant was seeking double her security deposit as this claim was not made on the original

application. I find that the landlord would be prejudiced by amending the tenant's claim as the landlord has not had an opportunity to know and prepare for this claim. I therefore decline to amend the tenant's application for dispute resolution.

Preliminary Issue- Evidence

Both parties agreed that the tenant served the landlord with her evidence via e-mail last night or the day before. The landlord testified that he did not have an opportunity to review all of the tenant's evidence. Both parties agreed that the landlord served the tenant with his evidence two days ago.

Section 3.14 of the *Rules* state that evidence must be received by the respondent and the Residential Tenancy Branch at least 14 days before the hearing.

Section 3.15 of *Rules* states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

I find that the tenant breached section 3.14 of the *Rules*. I find that the landlord breached section 3.15 of the *Rules*. The tenant's application for dispute resolution was filed on May 12, 2020, approximately four months prior to this hearing. I find that both parties unreasonably delayed the service of their evidence. I therefore refuse to consider either party's evidence.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and

important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2020 and ended by the end of May 2020. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that she is seeking a monetary award for \$1,200.00, the amount of rent she paid for May 2020. The tenant testified that the subject rental property was in an unlivable state when she moved in with her kids. The tenant testified that the front door latch was broken, there was no hot water and the sewage tank was full and the toilet could not be flushed. The tenant testified that sewage was up to the toilet line. The tenant testified that whenever she used the kitchen sink the bathtub would back up with sewage.

The landlord testified that the door latch was working when the tenant moved in and she broke it. The landlord testified that there was never a problem with the hot water or the sewage tank. The landlord testified that he had his property manager and two plumbers confirm the above. The landlord testified that the sewage and grey water tanks are completely separate and so the use of the kitchen sink would not result in sewage in the bathroom.

Analysis

Rule 6.6 of the *Rules* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

In this case, both parties provided divergent testimony as to the condition of the subject rental property during this tenancy. I find that the tenant has not proved her claim on a balance of probabilities. I therefore dismiss the tenant's claim without leave to reapply.

Conclusion

The tenant's application is dismissed 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 11, 2020

Residential Tenancy Branch