Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes — For the landlord: MNDC-S, MND-S, MNR-S, FF
For the tenant: MNSDS-DR, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the landlord's and the tenant's applications (application) for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for compensation for a monetary loss or other money owed, compensation for alleged damage to the rental unit by the tenant, a monetary order for unpaid rent, and to recover the cost of the filing fee.

The tenant applied for a return of her security deposit and furniture deposit and to recover the cost of the filing fee.

The participants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Both participants were affirmed or sworn into the hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing.

In addition, both parties provided affirmed or sworn statements that they were not recording the hearing.

The issues were many with these applications.

The landlord confirmed that he was a tenant of the owner of the rental unit, YM, who lives out of the country. The landlord said that he had YM's approval to sub-let the rental unit and that this tenant is a sub-tenant. The landlord, however, did not provide proof of the owner's approval to sub-lease the rental unit.

The tenant denied that this landlord was her landlord, and that she only had a tenancy agreement with YM as landlord, which is the reason she did not list this landlord as the respondent on her application. The tenant submitted that she served YM at the rental unit address, as their address was not listed on the written tenancy agreement.

Both parties submitted a copy of written tenancy agreements. It is noted that the tenancy agreement submitted by the tenant had "YM" listed as the landlord and the tenancy agreement submitted by the landlord showed the name "Y" was scribbled out and, in its place, was the handwritten name "K". Both had the same last name. It appears this document was altered. The landlord/applicant and the owner have the same last name on the tenancy agreements.

The landlord submitted that he served the tenant with his Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on June 24, 2021, and the tenant at first denied receiving it, then said she received the mail with just 2-3 pages in the envelope. The tenant denied the landlord's application was in the envelope and that she did not know that he had an application set for this date.

The tenant confirmed serving only YM at the rental unit address, not this applicant/landlord, as he was not her landlord.

Both parties referred to evidence they thought was submitted, but which was not before me.

Analysis and Conclusion

Landlord's application –

The landlord was advised that his application was being refused, pursuant to section 59(5)(c) of the Act because the landlords' application did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the Act. Additionally, Rule 2.5 states that the applicant must submit a detailed calculation of any

monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding. The applicant is provided with instructions in the application package as to these evidence requirements.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

Specifically, the landlord failed to provide a breakdown of the amount claimed of $9,200.78 at the time the landlord applied on or about June 6, 2021, or at any time from the date of his application. Additionally, a document dated May 25, 2021, was only submitted on November 23, 2021.

I find that proceeding with the landlord's claim at this hearing would be prejudicial and procedurally unfair to the tenant, as the absence of particulars that set out how the landlord arrived at the amounts being claimed makes it difficult, if not impossible, for the tenant to adequately prepare a response to the landlord's claim.

Both parties have the right to a fair hearing and the respondent is entitled to know the full particulars of the claim made against her at the time the applicant submits their application.

The landlord is granted liberty to reapply but is reminded to provide full particulars of their monetary claim in the future.

I do not grant the landlord the recovery of the cost of the filing fee as I have not considered the merits of their application.

Tenant's application -

Section 89(1) of the Act indicates the ways in which an application for dispute resolution must be given, such as in the case of the tenant's claim for a monetary order:

> (a) by leaving a copy with the person;
>
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
>
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
>
> (f) by any other means by service provided for in the regulations.

In the case before me I find that the tenant failed to provide sufficient evidence that she served her application to YM, who she listed as landlord/respondent. The tenant said the application was served to the rental unit address and the landlord KM said that YM lived out of the country.

I therefore find the tenant submitted insufficient evidence that she served the landlord her application for dispute resolution and notice of this hearing in a manner required by the Act.

Both parties have a right to a fair hearing and the landlord would not be aware of the hearing without having been served the Notice of a Dispute Resolution Hearing and application as required by the Act.

I therefore **dismiss** the tenant's application, with leave to reapply.

As I have not considered the merits of the tenant's application, I **dismiss** her request to recover the cost of the filing fee, without leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

Both applications –

The parties were cautioned that if they should choose to file a future application for dispute resolution, both parties should bolster their evidence.

For instance, the landlord should provide proof that he has authority to sublease the rental unit, as he stated he had.

Both parties should provide sufficient proof that their application was served on the other party, which could include photographs of the registered mail envelopes, witness statements or witnesses providing proof of the contents of the registered mail envelopes, and Canada Post registered mail receipts.

Both parties here confirmed their mailing addresses at the hearing.

If the tenant still wants to file her application against YM, she should be prepared to provide evidence that she was able to obtain YM's address, such as may be shown in land title searches.

Although I have declined to hear the landlord/applicant's application, I decline to order the landlord to return the tenant's security deposit and furniture deposit to the tenant due to the tenant's lack of proof of service to YM. Further, I have not ordered the landlord, KM, to return the tenant's security deposit and furniture deposit, as the evidence shows that the tenant transferred those funds to YM.

The landlord is cautioned that they must comply with the requirements of the Act, and in particular, a landlord must provide a written tenancy agreement with the required information. One required piece of information is that the landlord ***must*** provide the address for service and telephone number of the landlord or the landlord's agent.

[emphasis added]

The landlord is cautioned further that they may not require or accept a security deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement. In this case, the landlord collected the amount of one month's rent payable under the tenancy agreement, and referred to this amount as a security deposit and furniture deposit. The furniture deposit is not authorized under the Act.

After a review of the evidence, I further was unable to determine whether the landlord and the owner were related, as they carry the same last name. The landlord may want to provide proof that the tenant here was a subtenant in the event there are future dispute resolution hearings, and that he was not acting as agent for the owner. The evidence given by the tenant showed financial transactions to YM and not KM.

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*. Pursuant to

section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 6, 2021

Residential Tenancy Branch