



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant has applied for a monetary order in the amount of \$700.00 for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. The parties were affirmed and both parties provided testimony. The parties were provided the opportunity to present their documentary evidence prior to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant's late evidence dated January 14, 2022, submitted just days before the hearing on January 18, 2022 was excluded in full as I find the tenant failed to comply with Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.5 and 3.14. In addition, the landlord stated that they did not receive the December 2021 evidence package from the tenant and as a result, the tenant was provided two opportunities during the hearing to locate a registered mail tracking number. The first tracking number was incorrect and pre-dated the December 2021 evidence package. The tenant testified that they were unable to find the correct tracking number and as a result, I have excluded the December 2021 evidence package due to insufficient evidence by the applicant tenant.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB 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, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit (CEU) for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them. The tenant testified that they did not have an email address and as a result, the decision will be sent by regular mail to the tenant.

A previous decision file number (Previous Decision) was provided to both parties and has been included on the style of cause for ease of reference. In the Previous Decision the tenancy ended on October 31, 2019 and an order of possession was granted for the landlord.

The tenant did not file this application until September 28, 2021. When asked why they waited until the 2-year timeline had almost expired, the tenant stated that they were sick and also forgot. The tenant was advised that I was not satisfied that the tenant complied with section 59 of the Act as the tenant only specified that \$200.00 of the \$700.00 claimed related to their suitcase and a plant, with another \$100.00 relating to the filing fee. As a result, I dismiss the remaining **\$400.00** amount due to insufficient details **without leave to reapply**. I have not granted leave to reapply for the \$400.00 portion as the tenant is now beyond the statutory deadline of 2 years since the tenancy ended on October 31, 2019, pursuant to section 60(1) of the Act. In addition, I find that RTB Rule 2.9 applies, which states that a claim cannot be divided. Therefore, I will only address the \$200.00 amount claimed for the suitcase and plant, plus the filing fee at this proceeding.

Issues to be Decided

- Has the tenant provided sufficient evidence to support a monetary claim under the Act?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenant claims they submitted photos of a plant, which the tenant was advised was not before me. The tenant was also reminded that I would not be considering any of the late evidence served just 3 days before the hearing as noted above. The tenant confirmed that they did not have any receipts or other documentary evidence to support the value of the suitcase.

The tenant then discussed the plant, and as noted above, both the late evidence package and the December 2021 evidence package, I was excluding as noted above. The tenant was unable to locate a registered mail tracking number even after being provided two opportunities to locate it during the hearing.

It was at this point of the hearing that the tenant was advised that their application was being dismissed in full, due to insufficient evidence, which I will address further below.

Analysis

Based on the above and the evidence submitted and presented, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage.

Finally, it must be proven that the tenant did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Suitcase and plant – I find the tenant provided insufficient evidence to support all 4 grounds of the test for damages or loss. I find the tenant provided no photo evidence of a suitcase or a plant as both evidence packages were either served late or the tenant failed to provide sufficient tracking information, although they had since September 2021 to prepare for this hearing on January 18, 2022.

I find that an application without photo evidence, receipts or other supporting evidence is a frivolous claim and that section 62(4)(c) of the Act applies, which states:

Director's authority respecting dispute resolution proceedings

62(4) The director may dismiss all or part of an application for dispute resolution if

(c) **the application or part is frivolous** or an abuse of the dispute resolution process.

[emphasis added]

As the tenant's claim has no merit and is frivolous, I do not grant the filing fee.

The tenant is now beyond the 2-year time limit to file any further applications against the landlord. Should the tenant decided to do so, the landlord may wish to request an investigation against the tenant via the RTB CEU. The RTB CEU has the authority to levy administrative penalties under the Act up to \$5,000.00 per day.

Conclusion

The tenant's application is dismissed in its entirety, has no merit and is frivolous.

The filing is not granted.

This decision will be emailed to the landlord and sent by regular mail to the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 18, 2022

Residential Tenancy Branch