



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's property manager and resident manager (the "agents") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agents and I were the only ones who had called into this teleconference.

The agents were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agents testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The agents confirmed the landlord's email address for service of this decision.

The agents testified that the tenant was served with the landlord's application for dispute resolution via registered mail on August 27, 2021. The landlord entered into evidence a Canada Post registered mail receipt stating same. I find that the tenant was served with the above application for dispute resolution in accordance with section 89 of the *Act*.

The landlord's original application sought \$20,100.00 for recovery of the \$100.00 filing fee and \$20,000.00 for fire damage. The agents withdrew the landlord's \$20,000.00 claim for fire damage; the landlord's \$20,000.00 claim is therefore dismissed with leave to reapply.

The agents testified that on March 21, 2022 they served the tenant with an updated monetary worksheet via registered mail. The landlord entered into evidence a Canada Post registered mail receipt stating same. The updated monetary worksheet states that the landlord is seeking to retain the tenant's security deposit in the amount of \$737.50 and is seeking nine days pro-rated rent in the amount of \$442.74.

The agents testified that they did not amend the landlord's application for dispute resolution to reflect the updated monetary worksheet. The agents testified that an amendment form was not served on the tenant. The agents sought an in-hearing amendment.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

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 proposed amendment of the landlord's application for dispute resolution would completely change the nature and quantum of the landlord's claim. I find that

while the tenant was served with the updated monetary worksheet, in accordance with section 88 of the *Act*, that document does make it clear that the landlord's claim is being changed and does not provide the tenant with information regarding amendment requirements. I find that the tenant could not have reasonably anticipated the landlord's change in claim based on receipt of the updated monetary worksheet. I find that to amend the landlord's claim in this hearing would significantly prejudice the tenant who was not present to respond to the new claims. Pursuant to my above findings, I decline to amend the landlord's application for dispute resolution in this hearing.

As the landlords' claim was withdrawn and the landlord's amendment was denied, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

The landlord's application for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to retain the tenant's security deposit, pursuant to section 38;

is dismissed with leave to reapply.

The landlord application for authorization to recover the \$100.00 filing fee 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: April 29, 2022

Residential Tenancy Branch