



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The Landlord applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 67 for monetary compensation due to damage caused to the rental unit;
- An order pursuant to s. 67 for monetary compensation for other monetary loss; and
- Return of his filing fee pursuant to s. 72.

The Landlord advances his claims against the security deposit.

J.R. appeared as the Landlord. Y.A. appeared as the Tenant and he was represented by F.L., articling student.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord and Tenant advised that their application materials were served on the other. Both parties acknowledged receipt of the other’s application materials and neither raised objection with respect to service. I find that pursuant to s. 71(2) of the *Act* that each party was sufficiently served with the application materials of the other.

Preliminary Issue – Application of the Limitation Period

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on January 1, 2017.
- The Landlord obtained vacant possession of the rental unit on October 15, 2019.
- A security deposit of \$425.00 was paid by the Landlord.

The Landlord had indicated that the end of the tenancy may have been on October 31, 2019. However, he deferred to the Tenant's evidence that it ended on October 15, 2019. It should be noted that the October 15, 2019 date corresponds with a condition inspection report put into evidence by the parties.

The Tenant argued that the Landlord's claim is statute barred.

Section 60 of the *Act* states the following:

Latest time application for dispute resolution can be made

- 60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
- (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
- (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Upon plain reading of s. 60(1) of the *Act*, the limitation period for advancing a claim with respect to the tenancy ended on October 15, 2021, which is two years after the tenancy ended as per the undisputed testimony of the parties.

I was advised by the parties that the Tenant had filed an application for return of the security deposit. The Tenant provided a copy of the decision and order dated November

23, 2021 in which the Landlord was ordered to repay double the security deposit under s. 38(6) of the *Act*.

The Landlord argued that he understood that his claim was not barred as the Tenant had filed an application. F.L. directed me to the wording of s. 60(3) to emphasize that the Landlord's claim was statute barred as the Tenant's application was decided on November 23, 2021.

Upon review of the information on file and consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed his application on December 3, 2021. This is beyond the limitation period set by s. 60(1) of the *Act*. The Tenant's agent is correct that a claim may only be filed beyond the 2-year limit when an application respondent files a counterclaim prior to the conclusion of the initial application. In this case, the Tenant's claim concluded on November 23, 2021, which is the date his decision and order were made.

I find that the Landlord's claim is statute barred by application of s. 60(1) of the *Act*. I further find that the Landlord's claim is not saved by s. 60(3) of the *Act* as it was filed after the Tenant's claim had concluded on November 23, 2021. As per s. 60(2) of the *Act*, whatever claim the Landlord may have had arising from the tenancy no longer exists.

The Landlord's claim is, therefore, 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: July 04, 2022

Residential Tenancy Branch