



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

The Tenant applied for dispute resolution on May 21, 2022 for compensation for monetary loss, and reimbursement of the Application filing fee. The Tenant amended their Application on September 14, 2022, adding another claim for compensation. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 6, 2023.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The Tenant and agent of the Landlord (hereinafter, the “Landlord”) attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution. Both parties raised their concerns with service of documents and evidence from the other.

Preliminary Matter – Tenant’s Amended Application

The Tenant amended their Application on September 14, 2022. This added the separate grounds for dispute resolution, that of their claim for 12 months compensation in line with the Landlord’s reason for ending the tenancy via the Two-Month Notice to End Tenancy for Landlord’s Use of the Property (the “Two-Month Notice”). In the hearing, the Tenant stated they provided notification of their amendment to the Landlord by delivering this through the mail slot at the Landlord’s residential address, and attaching the document to a text message to the Landlord.

The Landlord contested the notification of this amendment, stating the document was attached to the door of the Landlord's residential address. Also, they stated that text messaging is not a valid means of service between parties.

The *Residential Tenancy Branch Rules of Procedure*, Rule 4.6, specifies that an applicant must serve an amendment only in a manner specified in s. 89 of the *Act*. The guideline sent to the parties – known as the Residential Tenancies Fact Sheet – The Dispute Resolution Process and numbered as Residential Tenancy Branch-114 – notes, regarding an amendment added to an existing Application, that an applicant can only serve a copy of the *Amendment to a Dispute Resolution Application* and supporting evidence either in person or by registered mail.

Attaching the document to the door, and especially text messaging, are not valid methods of service for an application of this type (*i.e.*, it is not a landlord's application for an order of possession, the only instance of service of hearing documents attached to a door) as per s. 89(1) of the *Act*. Text messaging is nowhere mentioned in the *Act*, the *Rules of Procedure*, or the *Residential Tenancy Regulation* as a means of service.

Because the Tenant did not serve this document in a correct manner to notify the Landlord of their amended Application, concerning their claim for 12 months of rent compensation because of the Two-Month Notice, I dismiss this piece of the Tenant's Application, with leave to reapply.

Issue(s) to be Decided

Is the Tenant eligible for compensation for monetary loss or other money owed, as per s. 67 of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee as per s. 72 of the *Act*?

Background and Evidence

At the outset of the hearing, the parties agreed that this tenancy started in 2013. The basic rent amount of \$1,250 increased to the amount of \$1,320 by the end of this tenancy in 2022. The Tenant provided that the end-of-tenancy date, as set through the Landlord ending the tenancy through serving a notice, was January 31, 2022.

The Tenant presented that they provided a cheque to the Landlord for an amount of \$5,280. This was for two months of rent at \$1,320 per month, and an amount for “back rent” meaning rent that was not paid previously and still owing to the Landlord at that time.

In approximately May 2022, the Landlord asked for another cheque from the Tenant, because the bank would not accept the previously cheque the Tenant had given the Landlord in late 2021. The Landlord made this request to the Tenant when the Tenant had arrived back to their previous rental unit residence to retrieve old mail sent to that address.

The Tenant indicated the amount of \$5,280 in the hearing; however, their Application listed the amount of \$5,440. The Tenant accounted for two months of rent, but did not set out the rest of the amount in detail.

On my direct questioning, the Tenant acknowledged this was rent they had attempted to pay to the Landlord, but the cheque they gave was never deposited or otherwise used. The Tenant clarified that they wanted a reprieve on this rent amount owing to the Landlord. That is, they applied in this hearing for an order from an arbitrator granting them a “pass” on paying this amount to the Landlord.

The Landlord questioned the reality of a bank not accepting a cheque that was barely six months old at that time. They stated their desire to have that amount granted to the Landlord in the form of a monetary order, for rent amounts still owing.

Analysis

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 s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Tenant presented that this amount of \$5,280 as claimed was money that the Landlord requested them to pay again. I find this is not a loss to the Tenant. It is not money that is owed to them from the Landlord. With this finding, I dismiss this piece of the Tenant's Application, without leave to reapply. Based on what the Tenant presented here, that would amount to free rent for them for at least two months, and they did not provide a rationale on why they would legally be entitled to such free rent. There likewise was no accurate record of a timeframe, or an exact amount.

There is no record of a previous cheque to the Landlord, and no accounting for what the amount of \$5,280 (or, alternatively, \$5,440) represents in terms of the value of the loss to the Landlord. I grant the Landlord no compensation for this from this hearing process. The Landlord must apply for dispute resolution for this amount owing.

Because the Tenant was not successful in this Application, I grant no reimbursement of the Application filing fee.

Conclusion

I dismiss the Tenant's Application for compensation in its entirety.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: February 7, 2023

Residential Tenancy Branch