



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction and Preliminary Matters

On October 27, 2022, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with D.R. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on or around November 9, 2022, and the Landlord confirmed receiving this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Tenant’s Notice of Hearing package.

She then advised that her evidence was emailed to the Landlord a “few weeks ago”; however, she testified that it “only finished being sent today” as it was such a large file. She stated that she did not have consent with the Landlord to exchange documents by email.

The Landlord advised that they did not have consent to exchange documents by email, and he stated that he did not receive the Tenant's emailed evidence. Given the solemnly affirmed testimony that the Landlord did not receive this evidence, I am not satisfied that the Tenant served her evidence to the Landlord. Even if the Landlord had received this evidence, as it was served so late, I find that this would be prejudicial to the Landlord to accept. The Tenant had ample time since first filing the Application to serve her evidence in a manner in accordance with the *Act* so that it would be considered. However, the Tenant neglected to do this. Furthermore, the Tenant uploaded this evidence to the Residential Tenancy Branch website too late for it to be considered, as well. As the Tenant did not comply with the timeframe requirements, of Rule 3.14 of the Rules of Procedure (the "Rules"), for serving this evidence to the Landlord, I have excluded this evidence and will not consider it when rendering this Decision.

The Landlord advised that his evidence was served to the Tenant on February 23, 2023, by email, and that this was sent to the email address that the Tenant used to e-transfer rent. The Tenant confirmed that she received this evidence. While there was no consent to exchange documents by email, as the Tenant confirmed that she received this evidence, and as she did not make any submissions regarding how it would be prejudicial to her to accept this, I am satisfied that this evidence has been served in accordance with the timeframe requirements of Rule 3.15 of the Rules. As such, this evidence will be accepted and considered when rendering this Decision.

All parties agreed that the Tenant gave up vacant possession of the rental unit on November 30, 2022. As a result, the only matter that will be considered in this hearing pertained to the Tenant's claim for monetary compensation.

I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. The Tenant initially applied for a Monetary Order for compensation in the amount of \$35,000.00, and she stated that this amount was chosen simply so that she could make the Application. There was no specific rationale for this amount, or for the loss equivalent to this amount. However, she submitted a handwritten note the day before the hearing claiming for an actual loss of \$8,698.89. The Tenant acknowledged that she did not amend her Application pursuant to Rule 4.1 to correct this monetary claim, nor did she serve an amendment to the Landlord to inform him of this change, pursuant to Rule 4.6 of the Rules.

Given that this change was done at the last minute, and that this change was not even served to the Landlord, I find that it would be prejudicial to proceed as the Tenant has not provided the Landlord with a fair opportunity to understand the claims that are being made. As well, the Landlord has not been afforded a proper opportunity to formulate a defense.

Consequently, I do not find that the Tenant has made it abundantly clear to any party of the exact amounts she believes is owed by the Landlord. As I am not satisfied that the Tenant outlined her claims precisely, with clarity, in accordance with the *Act*, I do not find that the Tenant has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For these reasons, I dismiss the Tenant's Application with leave to reapply.

As the Tenant was unsuccessful in her Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution with 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: March 6, 2023

Residential Tenancy Branch