



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, OPB, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, damage or loss under the Act, an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant has vacated the rental unit.

The landlord applied for dispute resolution on November 16, 2014.

The landlord provided affirmed testimony that on November 26, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were served to the tenant by a process server. The landlord read from a November 27, 2014 sworn affidavit confirming that S.F. served the tenant with the hearing documents. The tenant was served at her place of employment, the address provided by the tenant. Service occurred at 3:35 p.m. Hearing documents supplied as evidence were stamped by a commissioner for taking affidavits for the Province of British Columbia, providing a record of the documents served.

These documents are deemed to have been served effective November 26, 2014 in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The application was amended to correct the landlord names.

The landlord stated that on June 8, 2015 the tenant was served the 47 pages of evidence and itemized list setting out the claim, via registered mail, to the address the tenant had provided. In accordance with section 90 of the Act I find that the evidence and monetary claim details are deemed served effective June 13, 2015. Service was completed just two days before the hearing. Only the hearing documents were given to the tenant on November 26, 2014.

On June 8, 2015 the landlord served the Residential Tenancy Branch (RTB) with 47 pages of evidence including a monetary worksheet setting out the details of the monetary claim. The landlord confirmed that an itemized list of the monetary amount claimed was not given to the tenant in November 2014.

I considered Residential Tenancy Rules of Procedure in relation to service of the hearing documents and the evidence supplied by the landlord.

Section 3.1 of the Rules provides:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the application for dispute resolution

b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;

c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;

d) a detailed calculation of any monetary claim being made;

e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [Documents that must be submitted with an application for dispute resolution].

(Emphasis added)

From a review of the landlord's evidence I find that the documents are not new and could have been served in accordance with the time limits set out in the Rules. Further, the landlord failed to give the tenant a copy of a detailed calculation setting out the details of the \$7,110.36 claim made, as part of the hearing documents served on November 26, 2014.

I then considered section 3.14 of the Rules, which provides:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

Section 3.17 allows both parties to make submissions of late evidence if that evidence is new and relevant; meaning that it could not have been made available at the time the application was filed and served. Again, from my review of the evidence the monetary claim details could have been given to the tenant, even if estimates had been required for the items claimed. From my review of the evidence there was not a single document that was not available to be submitted in compliance with the Rules.

Therefore, in the absence of the tenant who was served with notice of the hearing, I determined that the hearing could not proceed as the result of the absence of service of documents as required by the Rules of Procedure and the absence of a detailed calculation of the claim given with the hearing documents. The tenant was not given a calculation of the claim as part of the application and the evidence was supplied only two days prior to the hearing. To proceed with the hearing when such basic requirements were not met would breach the standards of natural justice and administrative fairness.

Therefore, I find that the application is dismissed with leave to reapply within the legislation I time limit.

This decision is final and binding 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: June 15, 2015

Residential Tenancy Branch

