



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, RR

Introduction

This hearing dealt with an application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, the return of the security deposit, an order to allow a tenant to reduce the rent for repairs, services, or facilities agreed upon but not promised, and the recovery of the filing fee. The tenant participated in the teleconference, the landlord did not. The tenant provided proof that the landlord was notified of this conference by registered mail on November 25, 2014. I am satisfied that the landlord has been made aware of the date and time of today's conference in accordance with the service provisions of the Act.

Preliminary Issue

The tenant submitted some documentary evidence for this hearing. The Branch received the package on June 1, 2015. The tenant stated that she believes she served the landlord the documentary evidence "around May 29, 2015". The tenant stated she served the landlord the evidence package by registered mail however the tenant did not submit any receipt or tracking number to verify that. When I questioned the tenant as to where the proof of service of the documents were she replied "my bad, it's been a really busy stressful time for me and I guess I didn't do it right".

Rules of Procedure 3.14 and 3.17 address the issue before me as follows:

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.

3.17 Consideration of new and relevant evidence.

Evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the Arbitrator that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

The Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

The tenant stated that she believes she sent the evidence by registered mail around May 29, 2015. Section 90 of the Act states that when an item is sent by registered mail it is deemed served five days later, in this case the deemed service date would be June 3, 2015 which would make it late evidence. The tenant stated that she got busy and was unable to organize her files as she moved around a lot for the past six months. The tenant has not satisfied me that this evidence is new and relevant and could not have been submitted with their application, quite the contrary; none of the tenants' documentary evidence is dated past November 25, 2014. Based on all of the above I find that this evidence will not be considered as part of the tenants' application. The tenants affirmed testimony will be considered.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on April 24, 2014 and ended on August 8, 2014. The tenants were obligated to pay \$1185.00 per month in rent on the first day of the month and in advance and at the outset of the tenancy the tenants paid a \$615.00 security deposit. The tenant stated that on July 11, 2014 she gave the landlord verbal and written notice that she would be moving out by August 11, 2014. The tenant stated that the landlord asked her to move out by August 8, 2014. The tenant stated that she gave the landlords' son a hand written note of her forwarding address and followed it up with an e-mail after she moved out.

The tenant stated that she is seeking the return of the security deposit, along with \$30.00 for the cost of registering letters for this hearing and \$800.00 for cleaning the

landlords' vacation home. The tenant stated that the landlords hired her to do some cleaning and caretaking of one of the landlords' vacation rentals.

Analysis

When a party makes an application seeking a monetary order, they bear the burden of proving their case. The tenant is the sole applicant in this matter and has failed to meet that burden. The tenant was vague and disorganized in her presentation of her claim and failed to meet the timelines to serve the respondent the evidence as outlined earlier in this decision. Based on the insufficient evidence before me I must dismiss the tenants' application in its entirety.

Conclusion

The tenants' application is dismissed.

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: June 15, 2015

Residential Tenancy Branch

