



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38 of the *Act*; and
- recovery of the filing fee for the application from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend the hearing. The landlord attended the hearing.

Preliminary Issue – Service of Notice of Dispute Resolution Proceeding Package

At the outset of the hearing, the landlord advised that he had not served the tenant with the Notice of Dispute Resolution Proceeding Package, which contained the landlord's application, the call-in numbers, and the participant codes for the hearing scheduled on this day. He stated that he had received other emails from the Residential Tenancy Branch (RTB) but that for some reason he failed to receive the one email from the RTB containing all the information he was required to serve on the tenant. The landlord acknowledged that this was the reason that the tenant did not call in to the hearing. The landlord requested an adjournment in order to properly served the tenant with his application and evidence.

Preliminary Issue - Adjournment Request

Residential Tenancy Branch Rule of Procedure 7.9 provides the following list of factors to consider when determining if a request for adjournment should be allowed:

- The oral or written submissions of the parties;

- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party.

I considered the fact that the landlord expressed a willingness to consider negotiation with the tenant to resolve the monetary claim, and that this negotiation could be pursued while the parties await a reconvened hearing date. Therefore, the adjournment could allow time for the parties to come to a resolution of this matter on their own.

I considered the fact that the need for the adjournment arises out of the landlord's negligence in paying due care and attention to his application. The landlord acknowledged receiving other emails from the RTB, but stated he failed to receive the one email with the information required to be served on the other party. The landlord acknowledged that the tenant did not attend the hearing due to the fact the landlord had not followed through with the requirements to serve notice documents to the tenant.

I considered the fact an adjournment is not required to provide a fair opportunity for both parties to be heard, since the landlord would be at liberty to reapply for an application if the matter is dismissed with leave, instead of adjourned.

I considered the prejudice to each party if an adjournment was or was not granted. The landlord had made his application to retain the tenant's security deposit within the timelines provided under the *Act*. Not granting an adjournment, and instead dismissing the landlord's application with leave to reapply, potentially could result in the application of statutory provisions which would have the same effect as if the landlord had not made his application within the allowed timelines.

An adjournment would cause greater prejudice to the tenant by further delaying their opportunity for a decision on whether or not the security deposit would be returned to them. The landlord has held the security deposit since November 30, 2017. The tenant has not had the benefit of access to a hearing to determine if they are entitled to the return of those funds, which were originally paid by the tenant.

Having considered the factors and the circumstances in this current case, I find that:

- There is nothing limiting the parties from negotiating a settlement to resolve this matter, whether or not an adjournment is granted;

- The request for an adjournment is a result of the landlord's neglectful actions in failing to abide by the rules of procedure requiring him to serve notice of hearing documents to the other party;
- An adjournment is not required to provide a fair opportunity for either party to be heard, as a new application would provide the same opportunity; and
- There is potential prejudice to the landlord if an adjournment is not granted, however there is realized prejudice to the tenant by granting an adjournment in this matter.

Therefore, I do not grant the landlord's request for an adjournment.

I order that the landlord's application is dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as compensation for damages caused by the tenant?

Is the landlord entitled to retain the security deposit in partial satisfaction of the requested compensation?

Is the landlord entitled to recover the filing fee from the tenant?

Conclusion

I order that the landlord's application is dismissed 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: June 18, 2018

Residential Tenancy Branch