



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord attended the hearing, and the landlord's agent is also the landlord's Legal Counsel.

The parties did not give affirmed testimony but each gave oral submissions and the tenant has provided written submissions which I have read.

The landlord's Legal Counsel submitted that the tenant did not make the application for dispute resolution within the 2 year time limit specified in the *Residential Tenancy Act*, and the tenant has made the application on 2 previous occasions, both of which were dismissed. Copies of the resulting Decisions have been provided for this hearing. Legal Counsel submits that this application should also be dismissed and an order should be made prohibiting the tenant from making the application again.

The tenant submits that she has been in touch with the Executive Director, Residential Tenancy Branch by email, and the tenant was advised by her office to file this application as soon as possible. Copies of the emails have not been provided for this hearing or to the landlord.

Sequence of Events

The tenancy ended on March 29, 2017.

A hearing was conducted on March 13, 2017 and continuing on April 28, 2017 concerning an application made by the tenant seeking an order cancelling a notice to

end the tenancy for landlord's use of property as well as monetary compensation in the amount of \$13,342.00. The Decision is dated May 12, 2017 and states that the landlord completed significant renovations and as a result, the tenants suffered a loss of quiet enjoyment. However, the Arbitrator found that the tenants failed to provide any evidence that the tenants ever attempted to have the landlord deal with any disturbances. The tenants' application was dismissed.

The tenant applied for a Review on June 5, 2017 on the ground that the tenant had new and relevant evidence that was not available at the time of the original hearing. The Decision is dated June 15, 2017 and states that the Arbitrator could not find that the evidence was new, and that the tenant did not attempt to get the evidence until May 29, 2017, which was well after the original hearing. It also states that the tenants' application for a review was merely an attempt to reargue the matter.

On May 16, 2017 the tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for return of the security deposit. The landlord filed a cross-application on May 26, 2017 seeking monetary compensation from the tenant for unpaid rent and damages, and for an order permitting the landlord to keep the security deposit. The applications were joined to be heard together on October 19, 2017 and the resulting Decision is dated October 20, 2017. It states that both parties applied to amend their applications. The tenant's amendment was to add a claim for breach of quiet enjoyment, and the landlord wanted to claim additional damages. The Arbitrator dismissed the landlord's application to amend, with leave to reapply, because it was not made within the time required under the Rules of Procedure. The tenant's application to amend was also dismissed with leave to reapply because it was not related to the primary application concerning return of the security deposit. The tenant was granted monetary compensation equal to double the amount of the security deposit and double the amount of rent. The landlord was granted monetary compensation for unpaid rent and the filing fee, and the 2 awards were set off, which resulted in a monetary order in favour of the tenant for the difference.

The tenant submits that at the original hearing on October 19, 2017 the Arbitrator said there was not enough time to deal with this portion of the tenant's complaint and needed to reapply.

March 4, 2019 the tenant applied for a monetary order in the amount of \$30,000.00 for breach of enjoyment of peaceful living. The hearing was scheduled for June 17, 2019, and the resulting Decision, also dated June 17, 2019 states that the landlord did not attend and the tenant was not able to prove service. The Decision also states: "I

dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period."

Analysis

I have reviewed the Decisions of the director, Residential Tenancy Branch, as well as the lengthy written submission of the tenant, which includes evidence respecting the merits of the tenant's application.

There are 2 compelling facts regarding this dispute. The first is the fact that the tenant did not make this application within the time required under Section 60, which states as follows:

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

The tenancy ended on March 29, 2017 and the tenant made this application on July 30, 2019. I accept that the tenant made the application prior, on March 4, 2019, but was not successful because the tenant could not prove service on the landlord. I also accept the submission of the tenant that since that hearing wasn't scheduled by the Residential Tenancy Branch until June 17, 2019 it was already beyond 2 years, and the Arbitrator dismissed the application with leave to reapply. However, the Decision also specifies that leave to reapply is not an extension of any limitation period.

The more compelling fact is that the tenant has already had a hearing dealing with an application for monetary compensation for loss of quiet enjoyment on March 13 and April 28, 2017 which was dismissed without leave to reapply because the tenants failed to provide any evidence that the tenants ever attempted to have the landlord deal with any disturbances.

A party may not make a claim on a matter that has already been adjudicated upon, and in this case the application has already been adjudicated upon, and I dismiss the tenant's application without leave to reapply.

Legal Counsel for the landlord suggests the making of an order prohibiting the tenant from making the application again pursuant to Section 62 (3), which states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I decline to make such an order declining the tenant access to justice, however the landlord may make such a request to the Executive Director, Residential Tenancy Branch.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without 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: November 14, 2019

Residential Tenancy Branch