



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65.

The landlord did not attend this hearing, which lasted approximately 19 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. with only me present. The tenant called in late at 11:07 a.m., claiming that she had issues with her phone and phone battery. The hearing ended at 11:19 a.m.

The tenant stated that she served with the landlord with the tenant's application for dispute resolution, notice of hearing and first evidence package, containing a monetary order worksheet, tenancy agreement, and receipts, on October 29, 2020. The tenant provided a Canada Post tracking report with her application and confirmed the tracking number verbally during the hearing. She claimed that this mail was unclaimed and returned to her.

In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application, notice of hearing and first evidence package on November 3, 2020, five days after its registered mailing.

The tenant stated that she served the landlord with the tenant's second evidence package, containing a summary of events, a USB audio recording and digital evidence details on December 30, 2020. She said that she was not good with computers, so her audio recording took more time to upload.

I notified the tenant that this evidence would be deemed received by the landlord on January 4, 2021, five days after its registered mailing. I informed her that I could not consider the second evidence package at the hearing or in my decision because it was deemed received late, less than 14 days before this hearing, contrary to Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*. I notified the tenant that she had ample time to submit her evidence, since her application was filed on October 21, 2020, and this hearing was held on January 14, 2021, almost three months later.

The tenant stated that she wanted to withdraw her application and reapply. She claimed that she did not want to proceed with this hearing since her second evidence package would not be considered and she wanted to rely on an important audio recording in it.

I notified the tenant that since the landlord did not attend this hearing, I did not find it prejudicial to dismiss the tenant's application with leave to reapply.

I informed the tenant that she would be required to file a new application, pay a new filing fee, submit all of her evidence and attend the new hearing on time, if she wanted to pursue this matter further. I notified her that this file would be closed, and her evidence would not be transferred over to a new file. The tenant confirmed her understanding of same.

Conclusion

The tenant's entire 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: January 14, 2021

Residential Tenancy Branch