



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

This hearing was set as a result of a Supreme Court decision ordering that a matter be sent back to the Residential Tenancy Branch for rehearing. Both parties appeared and had an opportunity to be heard.

The original hearing was for two related applications. One was the tenants' application for return of double the security deposit; the other was the landlords' application for a monetary order for loss of rental income. (The file numbers of the respective applications are noted on the front page of this decision. The hearing was on April 23, 2015 and a decision was rendered on April 26, 2015. The arbitrator granted the tenants' application and dismissed the landlords' application.

The landlords applied for judicial review. Their application was heard by the Supreme Court on October 26, 2015. The landlords obtained an order that:

“The decision and order granted by [arbitrator] on April 26, 2015 be set aside and the matter be remitted back to the Residential Tenancy Branch.”

No costs were awarded to the landlords.

In their Petition to the Supreme Court the landlords had stated:

“The Petitioners do not intend to pursue any additional monetary claims on [their application] at this time. They only intend to address the matter regarding the Security Deposit.”

Based on the landlords' Petition the Residential Tenancy Branch understood that the landlords had withdrawn their application for review of the part of the decision that dismissed their claim. They gave the rehearing a new file number; issued a Notice of Hearing for the tenants' claim only; and set a date for the rehearing. This was set out at the top of the page of the Notice of Hearing dated November 5, 2015:

“This letter and attachments are your Notice of Hearing in regard to Residential Tenancy Branch File [this file], originally heard as [tenants' file number].”

As required the new Notice of Hearing was sent to the tenants to be served on the landlords.

The tenants said that they sent the documents to the landlords by ordinary mail. The landlords said they never received it. Although ordinary mail is a form of service permitted by the *Residential Tenancy Act* its' great disadvantage is that the sender has no means of proving when the item was sent and when it was received.

The landlords became aware that a rehearing had been set. They asked the Residential Tenancy Branch for copies of the relevant documents. The landlord said they received a copy of the Notice of Hearing but not the attachments referred to, namely: the new Application for Dispute Resolution and RTB Fact Sheet 114, The Dispute Resolution Process (a document provided with every Application for Dispute Resolution and available on-line at the Residential Tenancy Branch website.)

In the hearing I read the contents of the new Application for Dispute Resolution to the landlords. In addition to the contact information on the first page, the application stated:

“\$900 security deposit which is now double (\$1800.) because it is 15 days past move out. Plus \$50 application fee \$1850 total.”

The tenants said this was exactly the same as their original Application for Dispute Resolution; the landlords did not confirm or deny this statement.

I also confirmed for the landlords that the tenants had not filed any written evidence on this file; that the only evidence on the file was the material the landlords had submitted; and that I had not looked at the original files or read anything on those files. I advised the parties that in preparation for this hearing I had asked Head Office staff to provide me with a copy of the Petition filed by the landlords in Supreme Court and I had read that document.

At the beginning of the hearing the tenants indicated that they did not wish to pursue this matter any further. The parties agreed that the tenants' application would be dismissed by consent.

The next issue was whether the landlords' claim for loss of two months rental income and costs incurred by the landlords in pursuing the judicial review application at the Supreme Court.

The landlords argued that the Supreme Court decision was that the entire decision, which encompassed both of the original applications, was sent back for hearing. The tenants argued that the landlords had only pursued a review of their application at the Supreme Court and that therefore the rehearing was only of their claim. As they had withdrawn their claim they thought the proceedings would be ended and that was why they had not filed any evidence in response to the landlords' claims.

I pointed out to the parties that once the tenants withdrew their claim for return of the security deposit and the landlords had clear possession of it, the end result was what the main terms of the previously disputed Mutual Agreement to End Tenancy had set out. That being so the landlords had no claim for loss of rental income after the effective date of the Mutual Agreement to End Tenancy. The landlords reluctantly agreed with this analysis.

With regard to the landlords' claim for expenses incurred while pursuing their judicial review application I ordered that the landlords had leave to apply, by way of a new and separate application for dispute resolution, on that claim only. In making this decision I considered the following:

- The Supreme Court decision did not spell out whether both or only one of the files before it were being sent back for rehearing.
- The different understandings by the parties of what the hearing today would include.
- Because of the information they had received the tenants had not filed any response to the landlords' new claims.
- Even if this hearing was a rehearing of the landlords' original application that application did not (in fact, could not) include a claim for costs incurred after the hearing and the landlords had not served an amended Application for Dispute Resolution on the tenants for the new claim.
- If the landlords chose to pursue their claim for costs incurred while pursuing their judicial review application before the Supreme Court a hearing in which the issue was clearly delineated, the process was straightforward, and both parties had submitted the evidence they thought appropriate; would contribute to a decision that was untainted by procedural uncertainties.

Conclusion

- a. The tenants' application for return of double the security deposit is dismissed by consent.
- b. The landlords were granted leave to apply, by way of a new and separate application for dispute resolution, on their claim for costs incurred while pursuing their judicial review application before the Supreme Court only.

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 06, 2016

Residential Tenancy Branch

