



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDC

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing.

Preliminary Issue & Background – Service of Application/Splitting Claims/Res Judicata

The tenant's application was filed on December 15, 2016 but was not served to the landlord until February 13, 2017. The tenant explained that he did not know the requirement to serve the application within 3 days of filing.

In a previous decision dated September 13, 2016 (file#851387) the landlord was granted an order of possession and a monetary order for unpaid rent in the amount of \$2247.00.

The tenant vacated the rental unit on October 5, 2016.

On October 5, 2016 the tenant filed an application for a monetary order for compensation for loss in the amount of \$16,100.00. In a decision dated October 26, 2016, the parties came to an agreement in settlement of the tenant's application. The settlement terms were such that the landlord agreed to return the tenant's computer which has since been done and the tenant agreed to pay the balance of the outstanding monetary order (\$1247.00) as per the decision dated September 13, 2016, which has apparently not been done.

Analysis

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the Rules) requires that an applicant must, within 3 days of it being made available, serve the respondent

with a copy of the hearing package. The hearing package was made available for service on the landlord on December 15, 2016. The application was not served on the landlord until February 13, 2017.

Rule 2.9 of the Rules states that an applicant must not divide a claim.

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue on which a previous binding decision has been made involving the same parties.

I find the applicant did not serve the respondent with this application within 3 days of the hearing package being made available to him and waited almost 2 months to do so. I find the applicant is dividing claims as any claim being made in this application could have been included in the tenant's application filed on October 5, 2016 at the conclusion of the tenancy. Further, I find the subject matter of this application, specifically an application for monetary compensation for various items is *res judicata*, meaning the matter has already been resolved by way of a settlement decision dated October 26, 2016 and cannot be decided again.

For all of the above reasons, I am dismissing the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is 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: June 15, 2017

Residential Tenancy Branch