Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On June 11, 2019, the Tenant applied for a Dispute Resolution proceeding seeking monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with A.D. attending as his representative. D.B. also attended part way through the hearing as a witness for the Tenant. The Landlord attended the hearing with A.C. attending on behalf of the Landlord. K.H. also attended as counsel for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by registered mail on June 21, 2019 and the Landlord confirmed that he received this package. However, the Landlord advised that he did not receive the Curriculum Vitae of the Document Examiner as this was not served. Based on this undisputed evidence, and in accordance with Section 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package, with the exception of the Curriculum Vitae. This was excluded and not considered when rendering this decision. However, the Tenant was allowed to provide testimony with respect to this portion of evidence during the hearing.

The Landlord advised that he served the Tenant his evidence by registered mail on September 13, 2019. The Tenant confirmed that he received this evidence a few days ago, that he also received it by email, that he reviewed this evidence, and that he was prepared to respond to it. As this evidence was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted the documentary evidence submitted and it will be considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties have attended multiple prior Dispute Resolution proceedings in the past; however, the file numbers most pertinent to this Application are listed on the first page of this decision. The crux of this previous decision revolved around the determination of an illegal rent increase of the tenancy that started in 2007. In this decision, dated July 15, 2018, the original Arbitrator determined that “the parties agreed in writing to rent the rental unit for $1715 per month”, that this was “binding on the parties”, and that the rent was “subsequently reduced to $1640 by agreement between the parties. This was based on a “document that was titled Rent Contract Application dated June 1, 2015” that the Tenant believed he may have signed, but he did not recall whether he did or not.

The original Arbitrator dealt with the claims of an illegal rent increase and established the current amount of rent outstanding per month going forward from the date of that decision. This current Application pertains to the same issues of the illegal rent increase; however, the Tenant is now making the argument that the original decision was based on this Rent Contract Application of June 1, 2015 that he now knows that he did not sign. His position is that his signature on this document was forged by the Landlord and as a result, cannot be a binding document that can establish an agreement on what the rent should have been at the time.

A.D. submits that during the July 11, 2018 hearing, the original Arbitrator instructed the Landlord to provide a copy of this Rent Contract Application to the Tenant, but he was not provided a copy of this until a substantial time later. When the Tenant finally received a copy, he realized that he did not sign this form and that his signature was likely forged by the Landlord. As he had other Dispute Resolution proceedings scheduled, also involving the Landlord, instead of applying for Review Consideration of the original decision, he submitted a copy of this Rent Contract Application form as evidence into those other files, hoping to have this issue addressed as well. However, this evidence was continually severed from those other hearings.

The doctrine of *res judicata* was raised and while A.D. is familiar with this principle, he

submits that this situation is “overcome with fresh evidence.” It is his position that the Rent Contract Application form was not available during the original hearing and that it was not presented to the Tenant until some months after a decision was rendered on this matter on July 15, 2018. While the Tenant did not make an Application for Review Consideration on this point, as the Tenant attempted to deal with this matter in subsequent hearings, and as the issue was summarily dismissed with leave to reapply, it is his position that this matter does not fall under the legal doctrine of *res judicata* and should be heard.

The Tenant called on D.B., a handwriting expert, to provide witness testimony with respect to the signature on the Rent Contract Application form. D.B. advised that he was provided with seven sample signatures of the Tenant, and when he compared those samples to the signature on the Rent Contract Application form, it was his opinion that the signature on the form was not likely that of the Tenant.

K.H. submitted that the Tenant’s claims in this Application mirror that of the hearing of July 11, 2018, as these claims involve the same parties, deal with the same issues, and a decision had already been made with respect to those claims. As such, the Tenant is attempting to re-litigate the same claims and this Application should be dismissed due to *res judicata*. She reiterated that Black’s Law Dictionary establishes that the three elements defining this doctrine are:

- An earlier decision has already been made on this issue;
- A final judgement on the merits has been made; and,
- The same parties are involved.

She submitted a number of decisions of case law to support her position that the claims in this Application should fall under the principle *res judicata* and the Tenant should be prevented from “obtaining another day in court” to re-argue this case as a court of competent jurisdiction has already rendered a final decision on this matter.

When reviewing the previous decision and comparing the fact pattern to this Application, I find it important to note that the Tenant’s claims involve the same parties and the same issues, and the original Arbitrator already made a final, binding decision on this matter. While the Tenant’s position is that this alleged forged document impacts this original decision, as these matters were heard prior to this hearing and a decision was already rendered with respect to the same issues and parties, I am satisfied that the legal principle of *res judicata* applies, which prevents these same claims from being

heard again. As a decision was already rendered with respect to the same issues and parties, I am unable to change the decision of the original Arbitrator.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

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: October 24, 2019

Residential Tenancy Branch