



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$25,215.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of their filing fee.

The Tenant and G.Y., a representative for the Tenant ("Representative"), appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Landlord. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenant and the Representative, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, were the Tenant and the Representative.

The Tenant said that he served his Application and documentary evidence on the Landlord via registered mail, and he provided a Canada Post tracking number for this package. I checked the tracking number and it indicated that the package was mailed on August 9, 2019. Pursuant to section 90 of the Act, I find that the package was deemed served on the Landlord in compliance with the Act.

During the hearing, the Tenant and the Representative were given the opportunity to provide their evidence orally and to answer my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant confirmed the email address he provided in the Application at the outset of the hearing and confirmed his understanding that the Decision would be emailed to him and mailed to the Landlord, and any Orders sent to the appropriate Party in this manner.

The Tenant submitted a copy of a previous RTB decision and Order from another arbitrator in a previous hearing. The hearing number is quoted on the cover sheet of this Decision. Specifically, the Tenant had applied for a monetary order for the same things about which he seeks compensation in this hearing. The RTB records for the previous case indicate that the hearing was held on May 17, 2019, and the Tenant's application for a monetary order was granted in the same amount as he seeks in this proceeding. This raises issues of *res judicata*.

Res judicata is a rule of law stipulating that a final decision determined by an arbitrator with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties, and constitutes an absolute bar to a subsequent application involving the same claim.

The previous application for dispute resolution raised each of the allegations, which the Tenant has again asserted in the current Application. Specifically, the Tenant argued that the Landlord, K.M., had issued a Two Month Notice to End the Tenancy for Landlord's Use, dated September 5, 2018 ("Two Month Notice"); however, the Landlords did not use the rental unit for the purpose stated in the Two Month Notice, therefore, the Tenant asserts that the Landlords are liable to pay the him 12 times the monthly rent payable under the tenancy agreement. That is the amount the Tenant was awarded in the Order arising out of the previous hearing.

In the case before me, the Tenant argued that the Landlord, K.M., named in this Application, was not named in the first application or in the previous Decision and Order. The Tenant said that it may be difficult to enforce the Order against the Landlords, if K.M. is not named in the Order; however, the RTB does not have the authority under the Act to assist parties in enforcing their Orders

Further, I find that the previous matter named the Landlords set out in the Parties' tenancy agreement; however, the current Application names the Respondent, K.M., a person who may be on title to the residential property, but who was not a Party to the tenancy agreement. Further, the matter has been previously decided, and an Order was issued in the Tenant's favour.

Conclusion

The issues of this Application have been previously decided by an arbitrator, and thus the principle of *res judicata* applies; further, the named Respondent is not a party to the tenancy. Therefore, I hereby dismiss this Application 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 22, 2019

Residential Tenancy Branch