



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on January 12, 2020, in which the Landlord sought monetary compensation in the amount of \$2,005.00 for unpaid rent and utilities, authority to retain the Tenant's security deposit and recovery of the filing fee.

The original hearing occurred on June 5, 2020. The Tenant did not call into the hearing and the Landlord was awarded monetary compensation in the amount of \$2,151.00 as well as authority to retain that sum from the Tenant's security and pet damage deposit.

The Tenant applied for and was granted Review Consideration of the June 5, 2020 Decision. The Arbitrator considering the Tenant's request granted her a new hearing and by Decision dated June 9, 2020 the June 5, 2020 Decision was suspended pending a new hearing.

The new hearing was scheduled before me at 11:00 a.m. on July 13, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Res Judicata

As noted, the Landlord filed the within Application on January 12, 2020. The Tenant did not attend the June 5, 2020 hearing of the matter and a Decision was made in her absence.

The Arbitrator considering the Tenant's Application for Review Consideration found that the Tenant was not properly served with Notice of the June 5, 2020 hearing and suspended the Decision and Order made in favour of the Landlord bsence.

A review of Branch Records confirms that the Landlord filed a nearly identical application on January 19, 2020 (the file number for that matter is included on the unpublished cover page of this my Decision). As with the January 12, 2020 Application the Landlord sought compensation for half a month's rent as well as the unpaid electrical utility. Further, in both Applications the Landlord requested authority to retain the Tenant's security deposit and recovery of the filing fee. The only difference between the two Applications is that in the January 12, 2020 Application the Landlord sought \$2,005.00 and in the January 19, 2020 Application the Landlord sought \$2,161.00.

The hearing of the Landlord's January 19, 2020 Application was scheduled for June 11, 2020. The Landlord failed to call into the hearing and by Decision dated June 11, 2020, the Landlord's Application was dismissed without leave to reapply.

Neither party applied for Review Consideration of the June 11, 2020 Decision. As such, the Decision remains of full force and effect. The effect of that Decision is that the Landlord's Application for monetary compensation for half a month's unpaid rent, the unpaid electrical utility and recovery of the filing fee was dismissed without leave to reapply. Similarly, the Landlord's request for authority to retain the Tenant's security deposit was also dismissed without leave to reapply.

Section 77(3) of the *Residential Tenancy Act* provides that, except as otherwise provided, a decision is final and binding.

Res Judicata ("the matter is judged") is an equitable principle that, when its criteria are met, precludes relitigation of a matter. There are a number of preconditions that must be met before this principle will operate:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision (or their privies) are the same in both the proceedings.

All three of the above preconditions apply in the case before me. The question of the Landlord's claim for monetary compensation for unpaid rent and utilities, authority to retain the Tenant's security deposit and recovery of the filing fee was dismissed without

leave to reapply on June 11, 2020. The June 11, 2020 Decision was final and neither party applied for review consideration of that Decision. Further, the claim before me relates to the same parties as in the June 11, 2020 hearing.

The legal principle of *Res Judicata* prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the already decided matter, the application of *Res Judicata* operates to prevent the party from re-litigating the matter.

As such, and pursuant to section 82(3) of the *Act*, I set aside the June 5, 2020 Decision, as the matters giving rise to the Application have been decided by Arbitrator Lee on June 11, 2020 and by operation of that Decision were 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: July 14, 2020

Residential Tenancy Branch