



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application from the landlord seeking a monetary order for reimbursement of the security deposit and recovery of the filing fee for this application. The landlord participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the tenant did not appear.

Issue to be Decided

- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

These same parties appeared at a hearing before another dispute resolution officer on September 30, 2008. By way of decision issued on October 2, 2008, the landlord was ordered to retain the full security deposit plus interest.

Unbeknownst to the dispute resolution officer, prior to that hearing the landlord had already returned the tenant's security deposit to him, however, the landlord failed to take an opportunity to inform the dispute resolution officer of that fact.

In this current application the landlord seeks reimbursement of the security deposit from the tenant.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I am satisfied that the tenant was served with the application for dispute resolution and notice of hearing.

I find that the matter of the security deposit was before the dispute resolution officer at the hearing held on September 30, 2008. While the landlord failed to inform the dispute resolution officer that she had already returned the security deposit to the tenant, I am satisfied that the landlord was afforded an opportunity to present all of her evidence at that hearing.

Among other things, the decision issued on October 3, 2008 addressed the disposition of the security deposit. Black's Law Dictionary sets out that the rule of *res judicata* provides "that a matter once judicially decided is finally decided."

Further, section 78 of the *Act* provides, in part, that a party to a dispute may request a clarification or correction to a decision or an order but that such an application must be made "within 15 days after the decision or order is received." Clearly, in the circumstances of this case the 15 day period has elapsed.

Pursuant to all of the above, I therefore dismiss the landlord's application for a monetary order for recovery of the security deposit and the filing fee for this application.

Conclusion

I hereby dismiss the landlord's application without leave to reapply.

DATE: January 12, 2009

Dispute Resolution Officer