Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction
This hearing dealt with the tenant's application pursuant to the section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of his security deposit.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord agreed that he received the tenant's application for dispute resolution that was sent by registered mail on November 26, 2010.

At the hearing, I agreed to remove the name of the former owner of this property, Mr. BC, who had been incorrectly included in the tenant's application for dispute resolution as one of the landlords. I agreed to revise the application by replacing the former landlord's name with the second current landlord, the wife of Mr. HP.

Issues(s) to be Decided
Has the security deposit for this tenancy already been subject to a hearing where a Dispute Resolution Officer issued a decision and order? If so, can I consider the tenant's application to obtain a return of all or a portion of his security deposit?

Background and Evidence
This tenancy commenced on April 1, 2010. There was a month-to-month tenancy established at that time between the previous landlord and the primary tenant (who was not a party to the tenant's current application). The tenants vacated this rental unit on or about September 30, 2010, following the previous landlord's issuance of a 2 Month Notice to End Tenancy for Landlord Use of the Property.

The present application is from a sub-tenant who applied for the return of his $144.44 portion of the security deposit, one-third of the overall security deposit paid for this tenancy. Since the tenant maintained that the landlord had not returned his security deposit within 15 days of receiving his written forwarding address on October 30, 2010, the tenant applied for a monetary award of $288.88, double his security deposit pursuant to section 38(6) of the *Act*.

The tenant provided undisputed oral and written evidence that he handed written notice of his forwarding address to the landlord's wife, Ms. BKP, on October 30, 2010. He attended the landlord's home on that date accompanied by a witness. Although the tenant said that the female landlord threw his forwarding address to the ground, he provided written evidence that the tenant's witness picked it up and placed it in the landlord's mailbox. The tenant stated that he told the female landlord at that time that "I served you my address now it's your property" when his witness was placing the written address in the landlord's mailbox.

The landlord testified that the tenant's request for a return of his portion of the security deposit was unexpected because the landlord had already obtained authorization to retain the security deposit for this tenancy in October 2010. The landlord provided the Residential Tenancy Branch File Number for that decision regarding a hearing that occurred on October 7, 2010. The landlord said that he was the only party to attend that hearing. He testified that he was successful in his application to obtain a monetary award for unpaid rent from the primary tenant.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address.

In this case, there is undisputed evidence that the tenant provided the forwarding address in writing to one of the landlords on October 30, 2010. However, by the time he provided this notice to the landlord, the landlord had already applied for dispute resolution regarding this tenancy and had obtained an October 18, 2010 decision from Dispute Resolution Officer (DRO) C. Xxxx allowing him to retain the entire amount of the security deposit for this tenancy. In that decision, the DRO authorized the landlord to retain the entire $433.00 security deposit paid for this tenancy to partially offset the $1,300.00 in rent that she found owing from this tenancy. The DRO issued a monetary Order in the landlord's favour in the amount of $917.00. This was the amount remaining after the security deposit was deducted from the unpaid rent and the landlord's recovery of his filing fee for his application.

The doctrine of *res judicata* prevents a litigant from obtaining another day in court when a court of competent jurisdiction has entered a final judgement on the merits of a cause of action. A final judgment on the merits bars further claims based on the same cause of action.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

The evidence in this case is that the landlord made a previous application under section 67 of the *Act* seeking the recovery of loss under the *Act* for unpaid rent arising out of this tenancy. The previous DRO issued a monetary award and allowed the landlord to retain the security deposit obtained for this tenancy. The issue that is presently before me as a result of the tenant's application has already been considered as part of DRO Xxxx's October 18, 2010 decision. I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

Conclusion

I dismiss the tenant's application as the jurisdiction regarding this matter now lies with the Provincial Court of British Columbia because the landlord has been issued a decision regarding this matter.

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*.