



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order as compensation for the double return of their security deposit, and recovery of the filing fee. The tenants both participated in the hearing and gave affirmed testimony. While the landlord was not present, the tenants testified that he was personally served with the application for dispute resolution and notice of hearing on March 14, 2011.

Issues to be decided

- Whether the tenants are entitled to either or both of the above under the Act

Background and Evidence

A previous hearing was convened on February 16, 2011, in response to an application by the tenants concerning this same tenancy (file #####). While the landlord did not appear, the tenants participated and gave affirmed testimony. Details of the tenancy are set out in the decision dated February 17, 2011.

Included in their previous application, the tenants sought a monetary order for the double return of their security deposit. In this regard the dispute resolution officer found, in part, as follows:

I find that the Tenants' application for the return of their security deposit has been premature, as the Application for Dispute Resolution was filed prior to them providing the Landlord with their forwarding address. On this basis, I dismiss the Tenants' application for the return of their security deposit.

Although the Tenants declared in their Application for Dispute Resolution that mail being sent to the rental unit is being redirected it is not entirely clear to me that this declaration should be interpreted as being their forwarding address. I find that the Landlord is not obliged to comply with section 38(1) of the Act until he receives written notice from the Tenants, in which they provide him with a forwarding address or in which they advise him that he can use the rental unit as a forwarding address.

In relation to the present hearing, the landlord submitted documentary evidence to the Residential Tenancy Branch, which the tenants testified they did not receive. In his evidence the landlord confirms the tenants' claim that by way of registered mail, they have now informed him in writing of their forwarding address. While the tenants sent the registered mail on February 19, 2011, the landlord states in his documentary evidence that he received the letter on March 11, 2011, as he had been out of the country. In response to his receipt of the tenants' letter, the landlord claims that on March 15, 2011, he sent cheque payment to them in the full amount of the security deposit of \$400.00, by way of registered mail. The landlord further asserts that the tenants cashed the cheque on March 18, 2011. While the tenants confirmed in this hearing that they received the above payment, they take the position that as it was received outside of the 15 day period following their having informed the landlord in writing of their forwarding address, they are entitled to an additional amount of \$400.00, plus the \$50.00 filing fee.

Analysis

Based on the documentary evidence and testimony of the tenants, I find that their application for return of the security deposit was previously heard on February 16, 2011, and that it was dismissed by way of decision dated February 17, 2011. The reasons why I am therefore unable to consider the matter further are set out below.

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the above, I must dismiss the tenants' application.

As to whether the tenants wish to address any question around whether the dispute resolution officer who issued the previous decision, intended to dismiss their "premature" application for the double return of the security deposit, or dismiss with leave to reapply, their attention is drawn to section 78 of the Act which speaks to **Correction or clarification of decisions or orders**, and provides in part as follows:

78(1) Subject to subsection (2), the director may, with or without a hearing,

- (a) correct typographic, grammatical, arithmetic or other similar errors in his or her decision or order,

(b) clarify the decision or order, and

(c) deal with an obvious error or inadvertent omission in the decision or order.

Conclusion

Pursuant to all of the above, the tenants' application is hereby dismissed.

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*.

DATE: April 6, 2011

Residential Tenancy Branch