



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was to deal with the landlord's application seeking to be compensated for security deposit funds already refunded to the tenant in error and damages for loss of property.

Both parties appeared and gave evidence.

Preliminary Matter:

On the issue of whether or not I had jurisdiction to make a determination with respect to the status of the security deposit, I found it necessary to consider a previous decision issued on May 18, 2011. These parties were involved in a prior hearing that dealt with cross applications by both parties each seeking monetary compensation. At that time, the landlord was successful in receiving an order for monetary compensation for rent owed and was ordered to retain the tenant's \$625.00 security deposit in partial satisfaction of the claim.

However, after the initial hearing and prior to receiving the written decision, the landlord refunded the deposit under the mistaken belief that this was required, only to find later when the decision arrived that the monetary award being granted to the landlord was reduced by \$625.00 based on the presumption that the landlord had *kept* the deposit in partial satisfaction of the claim. By way of explanation, the landlord stated that regardless of the fact she had made that first application for rent owed including seeking to keep the deposit in partial payment towards the debt, she had been given the mistaken impression during the hearing, that she still had a legal obligation to return the deposit forthwith to ensure it was given back to the tenant within 2 weeks after the tenancy ended.

Unfortunately, once the landlord issued the refund cheque under this erroneous belief, the tenant cashed the returned deposit cheque. The tenant also refused to pay the monetary order issued in that first decision for rent owed to the landlord.

The landlord's application before me, was seeking, in addition to other compensation, a monetary order for \$625.00 representing reimbursement for these security deposit funds that had been refunded to the tenant in error.

Section 77 of the Act states that, except as otherwise provided in the Act, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer that presided over the prior hearing are not matters that I now would have authority to alter and any decision that I render must honour the existing findings.

I find that the portion of the landlord's application relating to the request for an order to retain the security deposit had already been dealt with, and the outcome determined at the previous hearing. I am not at liberty to adjust the previous order nor increase it to compensate for the security deposit that was mistakenly returned instead of being kept by the landlord.

I find that, to consider this matter again would violate the principal of *res judicata*. *Res judicata* is a rule in law establishing that a final decision, determined by an Officer with proper jurisdiction, and made on the merits of the claim, constitutes an absolute bar to any subsequent applications involving the same claim or identical issues.

I find that, according to the previous decision, the landlord did not have any obligation to refund the tenant's deposit nor to issue a security deposit refund cheque to the tenant. That being said, I can go no further than merely confirm the findings of the previous dispute resolution officer with respect to the security deposit.

Background and Evidence

The landlord testified that the tenancy began in July 1, 2010 and ended on April 30, 2011.

The landlord testified that when the tenant vacated, some property belonging to the landlord was taken by the tenant without the landlord's consent. According to the landlord, the property, consisting of a table, some chairs and a storage unit were left in the home at the time the landlord purchased it and the landlord agreed to loan these items to the tenant for the tenant's use. The landlord supplied estimates for the value of these items.

The tenant denied that the items were a part of the tenancy and suggested that if the landlord was seeking the return of the property or compensation, this would be a matter for Small Claims Court instead of through a dispute resolution hearing under the Residential Tenancy Act.

The landlord was also seeking compensation for a specialty hinged shower curtain that was removed by the tenant. The landlord supplied a copy of the receipt for the purchase of a "hotel" shower curtain rod purchased from Home Depot and is claiming compensation of \$49.95 plus tax.

The tenant disputed this allegation and stated that the landlord had never supplied the specialty rod for the main bathroom. The tenant alleged that the purchase shown pertained to a curved shower curtain rod for the upstairs bathroom. According to the tenant, this curved rod was left in place.

Analysis

The landlord was claiming compensation for the tenant's removal of personal property belonging to the landlord that the parties had agreed would be on loan to the tenant.

Section 62 of the Act gives the dispute resolution officer authority to determine

- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
- (b) any matters related to that dispute that arise under the Act or a tenancy agreement.

The dispute resolution officer may make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act. And may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations or a tenancy agreement.

With respect to private agreements for property, or use of property on loan from one party to the other, I find that an agreement of this nature was not a term in the tenancy agreement, but was a separate matter of negotiation perhaps related to, but not integral to, the actual tenancy contract. For this reason, I find I must decline jurisdiction with respect to the dispute about the status of the personal property in question. The landlord is at liberty to seek a remedy through another legal forum, thorough police or a claim in Small Claims Court.

With respect to the claim for the removal of the shower curtain which, according to the landlord, that was part of the rental unit and was wrongfully removed by the tenant, I find that it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof was on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

I find that the landlord has proven that she did purchase a shower rod. However, this evidence would only satisfy element 3 of the test for damages. With respect to meeting elements 1 and 2 of the test, I find that the landlord did not submit sufficient proof that this particular item was removed by the tenant in violation of the Act or agreement.

Based on the testimony and evidence presented during these proceedings, I find that the landlord's request for reimbursement of the funds sent to the tenant in error, relates to the security deposit issue, which was already determined and not within my authority to hear or decide.

In addition, I find that the landlord's monetary claim for the alleged theft of property is not a matter that I have jurisdiction to decide, as I have determined that this agreement was not a term of the tenancy agreement.

Based on the testimony and the evidence, I find that the landlord's monetary claim for the loss of the shower curtain rod has no merit due to insufficient evidentiary proof. Given the above, I find that the landlord's application must therefore be dismissed.

Conclusion

Based on the testimony and evidence I hereby dismiss the landlord's claim in its entirety 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: September 09, 2011.

Residential Tenancy Branch