



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND

Introduction

This is the Landlord's application for a Monetary Order for damage to the unit, site or property.

The Landlord gave affirmed testimony at the Hearing.

The Landlord served the Tenant with the Notice of Hearing documents and copies of her documentary evidence, by registered mail sent September 14, 2011, to the Tenant's forwarding address. The Landlord testified that the registered mail was returned to her "unclaimed" on September 29, 2011. The Landlord provided the original registered mail envelop in evidence.

Section 90 of the Act deems service by way of registered mail to be effected five days after mailing the documents, whether or not the recipient chooses to accept delivery. Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenant was served with the Notice of Hearing documents and documentary evidence pursuant to the provisions of Section 89(c) of the Act. Despite being deemed served with the documents, the Tenant did not sign into the teleconference and the Hearing continued in her absence.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The Landlord provided the following testimony and documentary evidence:

The Landlord filed an Application for Dispute Resolution on April 26, 2011, seeking a

Monetary Order for damage to the rental unit and the septic field, along with other relief. That Application was heard on June 8, 2011 and reconvened on August 22, 2011. The Landlord's claim for a Monetary Order for damages was dismissed on August 26, 2011.

The Landlord filed a subsequent Application for Dispute Resolution on September 8, 2011, which is the subject of today's Hearing. In her evidence package, the Landlord included a two page document, which states in part: "I am requesting that another officer review this file as I have found [the Dispute Resolution Officer at the first Hearing, "the DRO"] in her manner and tone to be biased." The Landlord also wrote about why she feels the DRO was biased. In the two page document, the Landlord also provides submissions with respect to why she believes the DRO was mistaken in her analysis and decision.

When I explained to the Landlord that her matter had already been heard and decided and therefore was res judicata, the Landlord stated that she was not attempting to re-argue the case, and was merely trying to claim for damage that was excluded on her prior Application. She stated that she was applying only for a monetary award for the cost of cleaning the carpets at the rental unit, and the replacement of the carpets because the stains would not come out.

Analysis

The Landlord's Application for Dispute Resolution filed September 8, 2011, in the section "Details of the Dispute" the Landlord writes:

"from Sept 1 2010 – May 5, 2011 [the Tenant] rented [the rental unit]. During this time, rugs, bedding, drapeirs, towels, mattresses, walls, doors, door frames, keyed entrances, chimneys, door mouldings, bathroom cupboards, fridge and stoves, were left damaged, dirty, soiled. Phone & kitchen utensils were taken by Tenant. See attached sheet."

(reproduced as written)

The Landlord submitted a Monetary Order Worksheet with her Application for Dispute Resolution, which contains the following list:

Description	Amount claimed
Cleaning out stove – garbage burned in	\$65.00
Change locks changed by tenant	\$102.00
Cleaning carpets and mattress plus couches	\$576.80
Estimate to replace carpets damaged	\$7,072.80
Pumped tank full of paper towel flushed by tenant	\$673.46
Replacement cost for bedding, housewares tenant damaged or took	\$632.56
Phone tenant took from rental	\$90.54

For new keyed lock broken by tenant	\$76.54
For replacements	\$221.69
Cleaning bill for [rental unit] after tenant left	<u>\$440.00</u>
Total monetary order claim	\$10,758.23

I have carefully considered the Decision of the DRO dated August 26, 2011, and find that this matter is res judicata, including the Landlord's claim with respect to the carpets.

*Res judicata: Latin, A thing adjudged. A rule that a final judgment on the merits by a court having jurisdiction is conclusive between the parties to a suit as to all matters that were litigated **or that could have been litigated in that suit.***

(emphasis added)

In the August 26, 2011, Decision, the DRO wrote, in part:

"Additionally, the landlord stated that there were several missing times from the rental unit and the rug needed cleaning after the tenant departed. Upon query, the landlord testified that the rug was almost ten years old."

"Further, the landlord's claim lacked specificity as to the exact amounts she was claiming for and I am not able to determine the remainder of the landlord's claim."

"As I find the landlord failed to comply with the Act by offering the tenant two opportunities for a final move-out inspection and by failing to give the tenant a copy of the condition inspection report and as I find the landlord's claim lacked specificity, I find the landlord's claim for **any remaining cleaning or damage has not be substantiated and I dismiss the remaining claim.**"

(emphasis added)

With respect to res judicata, the courts have found that:

"...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

I find that the matters raised in the Landlord's application were determined on August 26, 2011, and the DRO clearly stated that the Landlord's claim for **any remaining cleaning or damage** is dismissed.

The Landlord's application is therefore dismissed **without leave to reapply**.

Conclusion

The Landlord's application is 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: November 29, 2011.

Residential Tenancy Branch