



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, RPP, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit and for the return of personal property (which the Tenants clarified was actually to recover an overpayment of rent). The Tenants also applied to recover the filing fee for this proceeding.

I find however, that the Tenants are barred by the legal principle, *res judicata*, from proceeding with this application because I find that this matter was dealt with on its merits in a previous hearing of the Landlord's application on May 15, 2012. In that hearing, the Landlord applied to keep the security deposit and rent pre-payment in satisfaction of her claim for a loss of rental income and for cleaning expenses. The Dispute Resolution Officer found as follows:

- that the Tenants paid the Landlord a security deposit of \$1,000.00 and a pre-payment of the last 2 weeks rent of \$1,000.00 at the beginning of the tenancy;
- that the Landlord was not entitled to require or accept rent in advance and held that the rent pre-payment was an additional security deposit;
- that the Landlord had returned \$900.00 of the Tenants' security deposit;
- that the Landlord was entitled to compensation of \$750.00 for a loss of rental income, \$50.00 for cleaning expenses and \$50.00 for the filing fee for a total monetary award of \$850.00;
- that the Landlord was entitled to retain \$850.00 from the remaining security deposit of \$1,100.00 held by her and that she had to return the balance of \$250.00 to the Tenants.

The Tenants filed their application for dispute resolution on April 30, 2012 however it was not set for hearing with the Landlord's application on May 15, 2012. The Tenants argued that the Dispute Resolution Officer advised them that she did not have any of their documentary evidence (which they had filed only in support of their own application) but that it would be considered at the hearing of their application. The Landlord denied this and claimed that the Dispute Resolution Officer advised the Parties

on May 15, 2012 that that hearing would be a final determination on the issues of the security deposit and pre-payment of rent and that the Tenants' evidence would be considered only if there were any further issues to be dealt with.

The Landlord also claimed that she was never served with a copy of the Tenants' documentary evidence. The Tenants said they relied on a friend to serve their hearing packages and assumed that the Residential Tenancy Branch would have included in with those packages a copy of their documentary evidence. The Tenants argued that their friend was never advised that he had to make a copy of their documentary evidence and include it in with the hearing documents. However, the hearing documents themselves include instructions to the parties that they are responsible for serving the other party with any evidence upon which they intend to rely at the hearing as well as the time limits for doing so. Given that the Tenants did not serve the Landlord with their documentary evidence, I would have excluded it at the hearing of the Tenant's application pursuant to RTB Rule of Procedure 11.5(b) in any event.

In summary, I find that there has been a final determination on the issue of the Tenants' security deposit and rent pre-payment and that they are not entitled to reopen the issue on the grounds that their documentary evidence was not considered given that the Tenants' documentary evidence would have been excluded due their failure to serve it on the Landlord.

Conclusion

The Tenants' 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: May 24, 2012.

Residential Tenancy Branch