



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION ON REQUEST FOR CORRECTION AND CLARIFICATION

Dispute Codes: FF MND MNDC MNR MNSD

The applicant has requested a correction and clarification to the Residential Tenancy Branch (RTB) decision and order dated January 9, 2013.

Section 78 of the *Residential Tenancy Act* (the *Act*) enables the RTB to correct or clarify a decision or order and to:

- correct typographic, grammatical, arithmetic or other similar errors in a decision or order, or
- deal with an obvious error or inadvertent omission in a decision or order.

The applicant requested correction or clarification of the following portions of the decision and order:

1. Definition of Res Judicata
2. File #798013 – Balance of claim was “dismissed with leave to reapply”
3. \$300.00 – Claim for liquidated damages & \$180.65 Oct 1-5 Vacancy Loss (dismissed)
4. \$1639.68 – Claim for carpet cleaning (dismissed)
5. \$96.25 – Claim for key/lock replacement (dismissed)
6. \$50.00 – Claim for filing fee (only awarded \$25.00)

The following information was submitted by a representative of the landlord who did not participate in any way in the hearing that led to the final and binding decision of January 9, 2013.

The landlord’s representative requested a definition of the legal term *Res Judicata*, referenced a number of times in this decision as she could not find a definition of this term on the RTB website.

The landlord’s representative submitted that a portion of a previous decision issued with respect to this tenancy on October 18, 2012 by an arbitrator had been inadvertently overlooked in my January 9, 2013 decision. Although a monetary award of \$1,170.00

for rental arrears for September 2012 formed part of the previous decision, the landlord's representative maintained that the following wording of the previous decision had not been taken into account in my decision:

... The remainder of the landlord's application is dismissed with leave to reapply...
(emphasis in original)

The landlord's representative provided the following additional explanation as to why the landlord could not have applied prior to the end of the tenancy for some of the monetary awards included in the landlord's subsequent application of October 11, 2012.

...Please be advised that we specifically instructed our agent to request that the balance of our claim be dismissed with leave to reapply as we were not able to obtain all of the documentary evidence needed to support our claim(s) to satisfy the tests for damages, amend our current claim and serve the respondent and the Residential Tenancy Branch in accordance with the published deadlines to the hearing. Consequently we filed a separate application which included these claims and all of the supporting evidence...

The landlord's representative maintained that the legal principle of *res judicata* and the above-noted wording of the previous decision enabled the landlord to seek the additional monetary awards sought in the landlord's October 11, 2012 application.

The landlord's representative asserted that the claims for liquidated damages and vacancy loss for the period from October 1-5, 2012 could still be sought under the landlord's October 11, 2012 application.

1) Res Judicata

Although I am in no way limited in my reliance on well-established legal principles by what is presented on the RTB website, I have added some information to explain the concept of *res judicata* in my amended decision. Essentially, this legal principle prevents a decision-maker from rendering a decision on a matter that is already subject to a final and binding decision from a previous proceeding.

In addition to the passages added to the attached corrected and clarified decision, I find that the following passages from the text: **Res Judicata**, Spencer-Bower and Turner, 2nd ed. (London: Butterworths, 1969) apply to the circumstances analogous to those before me on this application. Of particular relevance to my consideration of the landlord's application for a monetary award for liquidated damages are the following comments at page 380:

... where there is substantially only one cause of action, and it is a case, not of "splitting separable demands", but of splitting one demand into two quantitative parts, the plea [of res judicata] is sustained...He cannot limit his claim to a part of one homogeneous whole, and treat the inseparable residue as available for future use...

... Thus, where the omitted matter is a portion of the entire sum, or an item or parcel of the entire property, recoverable on a single cause of action, the judgment is a bar to any subsequent action in respect of such omitted matter...

There is no doubt whatsoever that the principle of *res judicata* bars me from considering the landlord's October 11, 2012 application to retain the tenant's security deposit. This matter was addressed in the final and binding October 18, 2012 decision allowing the landlord to retain all of the tenant's security deposit. I find no reason to correct or clarify my comments with respect to that portion of my decision (page 2 of my decision).

2) Consideration of Landlord's Claim for Loss of Rent for October 2012

I have given careful consideration to the comments from the landlord's representative regarding the instructions given by the landlord to the landlord's agents with respect to the claim for rent owed for October and November 2012. On this point, the previous decision stated the following:

...Although the landlord's application had included a claim for rent owed for the months of October and November 2012, the landlord stated that the tenant has already vacated effective September 17, 2012... The landlord stated that the tenant did not pay any of the rental arrears and the landlord is therefore claiming \$1,120.00 for the rent and late fee for September 2012...

The October 18, 2012 decision provided no reference to any request from those attending the hearing that day on the landlord's behalf that the landlord asked for the dismissal of the landlord's claims for October and November 2012 with leave to reapply. As was noted at page 2 of my January 9, 2013 decision, the landlord clearly knew by the time of the October 18, 2012 hearing that there was a new tenant in the rental unit as of October 6, 2012 and that the landlord's potential entitlement to loss of rent for October and November 2012 would be limited to the first five days of October 2012. I see no reason why the landlord's representatives would have been prevented from obtaining a monetary award for the first five days of October 2012 on the basis of their sworn testimony at the hearing. However, I also recognize and accept that the explanation provided by the landlord for seeking a dismissal of the applications for losses for October and November 2012 is consistent with the previous arbitrator's decision to dismiss the remainder of the landlord's application with leave to reapply.

Under these circumstances, I find that my decision to dismiss the landlord's claim for losses incurred during the first five days of October 2012 was based on an inadvertent omission. In arriving at my original decision, I failed to appreciate the effect that the previous arbitrator's decision to dismiss the remainder of the landlord's claim **with** leave to reapply would have on my ability to consider this portion of the landlord's current

claim. For this reason, I have issued a corrected decision on this portion of the landlord's claim.

3) Liquidated Damages

I have also considered the request by the landlord for correction and clarification of my dismissal of the landlord's application for \$300.00 in liquidated damages. I am hopeful that:

- my explanation of the legal principle of *res judicata* set out in this Correction and Clarification Decision; and
- the additional clarification provided to the original decision

are of assistance in providing a better understanding of why this segment of the landlord's claim was dismissed. As noted above, the landlord could clearly have applied for recovery of the liquidated damages charge when the original application for a monetary award was made. However, the landlord did not choose to do so and rather sought reimbursement for three month's rent. The landlord's subsequent application for loss of rent in accordance with the residential tenancy agreement lends further evidence that the landlord was seeking to enforce the monthly rental terms of the tenancy agreement.

I can only revise my final and binding decision if I am satisfied that there was an inadvertent or obvious error in that decision. For the reasons outlined above and in my decision, I am not at all convinced by the submission of the landlord's representative that the landlord's disagreement with my decision can be characterized as an inadvertent or obvious error requiring correction.

4) Remainder of Landlord's Request for Correction/Clarification

I find the remainder of the items identified in the landlord's request for a correction/clarification are more in the nature of a disagreement with my final and binding decision. For example, the landlord's representative disagreed with my weighing of the inadequate evidence provided by those who represented the landlord at the January 9, 2013 hearing regarding the claim for carpet replacement. She asked "at the very least" for the awarding of a partial claim for what she incorrectly described as "carpet cleaning" in the amount of \$1,639.68. Similarly, the landlord's representative cited the exact same section of the *Act* (s. 25) as that referenced in my decision, in her claim that there was an error in my dismissal of the landlord's claim for key and lock replacement. I can assure the landlord that I am fully aware of this section of the *Act* and made my decision on this item based on my weighing of the evidence presented by the landlord's representatives at the hearing. She also asked for a reimbursement of the full amount of the landlord's filing fee, rather than the partial amount I allowed in my January 9, 2013 decision.

Based on the submission of the landlord's representative, it would appear that she is under the mistaken impression that a request for correction and clarification enables her to present additional arguments that were not made or were clearly rejected at the original hearing in order to obtain a different decision. It is the responsibility of a party to a dispute resolution hearing to provide evidence at the hearing rather than to employ the review process set out in the *Act* to do so. The review process only allows me to make changes to one of my final and binding decisions on an application by a party to the proceedings if I have made an inadvertent or obvious error.

I am not of the opinion that there is any inadvertent or obvious error in my findings with respect to my consideration of the landlord's claim for carpet replacement (not carpet cleaning as referenced in the request for correction), the key/lock replacement, or in my assessment of the landlord's entitlement to recovery of only part of the filing fee. I also find no need to clarify my decision on any of the above three points as I find the landlord's requests are more in the nature of a disagreement with my weighing of the evidence and my decision that the landlord was not entitled to the monetary award the landlord was seeking with respect to these points.

The original decision is corrected and clarified where noted in the attachment, a copy of which has been forwarded to both parties.

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: February 13, 2013