



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNDC, MNR & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The tenant acknowledged that he had received a copy of the Application for Dispute Resolution. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on October 1, 2011 and ended on October 6, 2012. The rent is \$4250 per month payable on the first day of each month. The tenant(s) testified that he paid a security deposit and pet damage deposit that totals \$4250.

The Application for Dispute seeks a monetary order in the sum of \$8500 (being the rent for September and October 2012).

The landlord filed a previous application which was heard on January 31, 2013. The landlord failed to attend the previous hearing and the application was dismissed. The parties agree that the claims in the within application were the identical claims made in the application that was dismissed on January 31, 2013. The representative of the landlord testified the landlord was not able to attend as she was out of the country to attend the funeral of her father.

Analysis - Monetary Order and Cost of Filing fee

Section 77(3) of the Residential Tenancy Act provides as follows:

77 (3) Except as otherwise provided in this Act, a decision or an order of the director is final and binding on the parties.

I determined that the decision in the previous arbitration is final and binding on the parties and it is not open for the landlord to commence a new application for the same claims. It was open to the landlord to request an adjournment of the previous hearing. There is no evidence that she did so. Further, section 79(1) and (2) of the Residential Tenancy Act provides

Application for review of director's decision or order

79 (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.

(2) A decision or an order of the director may be reviewed only on one or more of the following grounds:

(a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;

(b) a party has new and relevant evidence that was not available at the time of the original hearing;

(c) a party has evidence that the director's decision or order was obtained by fraud.

The appropriate procedure for the landlord would have been to make an application for review or to make an application for judicial review. I do not accept the submission of the landlord that as the decision does not state the application is dismissed without leave to re-apply that it is open to the landlord to file a new application for the same claim. The tenant testified that he has taken time off work to attend the previous and present hearing and he is prejudiced accordingly. To permit a party to file a new application for the same claim after it was dismissed in a previous arbitration would in effect be ignoring the words “final and binding” in section 77(3) of the Act. In my view the arbitrator would have to have granted leave to re-apply in order for the landlord to have that right.

While it is not necessary to include the words “without leave to re-apply” for clarity purposes I order the application be dismissed without leave to re-apply.

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: June 20, 2013

Residential Tenancy Branch