



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Om'Ax Realty Property Mgt
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

The Landlord ND gave affirmed testimony at the Hearing.

ND testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenants, via registered mail, to their residence on May 1, 2013. ND provided the tracking numbers for the registered documents.

Based on ND's affirmed testimony, I find that the Tenants were served with the Notice of Hearing documents and copies of the Landlord's documentary evidence. The Tenants did not sign into the teleconference, which remained open for 20 minutes, and the matter proceeded in their absence.

Issue to be Determined

Is the Landlord entitled to a monetary award in the amount of \$1,750.00 for loss of revenue for the month of February, 2013?

Background and Evidence

This fixed term tenancy began on May 1, 2012, and was to end on May 30, 2013. Monthly rent was \$1,750.00, due on the 31st day of each month. The Tenants ended the tenancy early, on January 31, 2013. The rental unit was re-rented effective March 1, 2013.

On March 28, 2013, the parties attended a Dispute Resolution Hearing with respect to ND's Application for compensation for the Tenants ending the tenancy early; for damage to the rental unit; an Order permitting ND to keep all or part of the Tenant's security and pet damage deposits; and recovery of the filing fee. A Decision was rendered on April 20, 2013, granting a monetary award in the amount of \$125.00 for the cost of carpet cleaning, \$100.00 for ending the tenancy early, and recovery of half of the filing fee. ND was ordered to return the balance of the security and pet damage

deposits to the Tenants and the Tenants were provided with a Monetary Order in that amount, \$900.00.

I asked NB why he did not seek compensation for loss of revenue for February, 2013, in his former Application for Dispute Resolution. NB testified that he was in Australia at the time of the March 28, 2013, Hearing and that he had no documents with him. He stated that he was not well while he was in Australia and therefore he was confused with respect to the details of the tenancy. NB acknowledged that he returned the Tenants' post dated cheque for February's rent before he went to Australia.

NB stated that the new occupants paid a security deposit for the rental property in January, 2013, to another agent of the Landlord's. He stated that he thought the new occupants would be moving into the rental unit on February 1, 2013, but they did not move in until March 1, 2013 because they were delayed.

NB submitted that the Tenants should pay what is due to the Landlord and that he should not be held to the principles of *res judicata*.

Analysis

As NB was informed during the Hearing, I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier Decision, under the principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

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 Landlord's application for loss of revenue for the month of February, 2013, should have been brought forward at the March 28, 2013, Hearing, and that this matter cannot be revisited under the principle of *res judicata*.

Conclusion

The Landlord's application is **dismissed**, as I find that the Landlord's Application has already been decided and cannot be revisited under the principle of *res judicata*.

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: July 30, 2013

Residential Tenancy Branch

