



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This was a review hearing conducted by conference call with respect to the landlords' original application for a monetary order and an order to retain the tenants' security deposit. The original hearing was held on October 2, 2013 by conference call. The landlord participated in the hearing, but neither of the tenants attended. In a decision dated October 3, the arbitrator awarded the landlords the sum of \$2,089.20 and directed that the landlords retain the security deposit of \$500.00 in partial satisfaction of the award. He granted a monetary order for the balance of \$1,589.20.

The tenants applied for a review of the October 3rd decision and order. The tenants' application for review was granted by a Review Consideration Decision dated November 6, 2013. The arbitrator conducting the review found that the October 3rd decision and order was likely obtained on the basis of the fraudulent testimony and submissions of the landlord. She ordered that the October 3rd decision be suspended pending the outcome of a review hearing to be conducted as a new hearing of the original application by the landlords. I was appointed to conduct the review hearing, held by conference call on December 19, 2013. The named landlord called in and participated in the hearing, as did both of the tenants. It was not necessary to hear from a proposed witness and she was not called upon to give evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

This tenancy began in 2009 and ended on May 31, 2011. There have been three dispute resolution proceedings that preceded this application by the landlord. In

decisions dated July 20, 2011 and December 29, 2011 the landlords obtained monetary awards against the tenants with respect to claims related to the tenancy. The landlord's application that is now before me was filed at the Residential Tenancy Branch on July 2, 2013. The prior decisions made with respect to the tenancy contained findings that the tenancy ended on May 31, 2011; these findings were based upon the testimony of the landlord in the previous hearings. The findings made in previous decisions with respect to this tenancy have not been disturbed upon review or judicial review and they are binding upon me and upon the parties.

Analysis

At the hearing the landlord acknowledged that her claim was out of time and had no merit. She said at the hearing that she brought the proceeding in order to get the tenants' attention and to locate their whereabouts, apparently because she has not succeeded in recovering an outstanding monetary award from a previous dispute resolution proceeding.

Section 60 of the *Residential Tenancy Act* provides that an application for dispute resolution must be made within two years from the date that the tenancy ends and if a claim is not made within the two year period, the claim ceases to exist for all purposes.

I find that the landlords' claim is out of time and is barred by the provisions of section 60 of the *Residential Tenancy Act*. I note as well, that this application by the landlord amounts to an improper form of claim splitting because it could have been but was not brought as part of one of the former claims filed by the landlord and the doctrine of *Res Judicata* which prohibits claim splitting, constitutes a further ground for refusing this claim.

In their materials submitted after the review hearing was granted, the tenants requested compensation for expenses they claim to have incurred to deal with this proceeding; they claimed \$52.00 for registered mails, review hearing fees of \$50.00 and lost wages of \$1,000.00 to attend hearings. The tenants also suggested in their submissions that I should conduct a review and cancel previous decisions concerning the tenancy that were made before the decision and order under review in this hearing.

Conclusion

The decision and order under review that was granted on October 3, 2013 was obtained based on false evidence presented by the landlord. The landlords' application was out of time when it was filed on July 2, 2013. I therefore set aside the original decision and

order dated October 3, 2013. The landlords' application for dispute resolution is dismissed without leave to reapply because it is out of time.

With respect to the tenants' requests, I have no power to alter, review, or cancel prior decisions made in other proceedings concerning this tenancy and the only relief I can grant on this application is an order for the repayment of the filing fee paid with respect to this review application. Because the landlord's claim in this proceeding was spurious and without merit I order that the landlord repay the tenants the \$25.00 filing fee for the review consideration application and I grant the tenants an order under section 67 in the said amount. This order may be set off against any amount or judgment that may be due to the landlord from the tenants in respect of this tenancy.

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: December 27, 2013

Residential Tenancy Branch

