



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and her agent

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 25, 2013 in accordance with Section 89. The tenant submits that this package was returned to her as unclaimed.

The tenant testified she re-served the landlord with the same package on February 13, 2014 by sending 4 copies of the package by registered mail. The tenant sent two packages to the landlord at two separate addresses (her home and the address she conducts business as a landlord) and two packages address to the landlord's alias name as identified in this Application at the same two addresses (her home and the address she conducts business as a landlord).

As per Section 90, each of the 4 packages is deemed to be received by the landlord on the 5th day after it was mailed. Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit; and for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant seeks compensation for return of double the amount of the security deposit because the landlord has failed to return the security deposit as previously ordered in a

decision written by an Arbitrator on July 5, 2013. In that decision the Arbitrator found that the landlord had filed an Application for Dispute Resolution claiming against the security deposit therefore complying with the requirements of Section 38(1) and order returned of the security deposit only.

The tenant also seeks compensation for the time, effort, and expenses she incurred in preparing for two previous hearings. The first hearing was based on the landlord's Application for Dispute Resolution and was held on March 7, 2013. The second hearing was based on the tenant's Application and was conducted on July 4, 2013.

The tenant submits that despite obtaining an garnishment through the Small Claims Court of British Columbia against the landlord she has yet been able to serve the landlord in person and she continues to incur expenses related to the disputes and the enforcement of the order granted on July 5, 2013.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

As the Arbitrator found, in her decision dated July 5, 2013 that the landlord had complied with Section 38(1) and because the Arbitrator did not order the return of double the amount of a security deposit because of the landlord's compliance I find the matter raised in the tenant's most recent Application is *res judicata*.

In regard to the tenant's claim for compensation for her efforts; her preparation; and costs incurred to prepare for previous hearings I find that these are not costs allowed for recovery under the *Act*.

Finally, in regard to the tenant's claim for expenses incurred in attempting to enforce the previous order dated July 5, 2013 I find that these are not matters related to the tenancy but rather are expenses incurred in the collection of a debt and as such falls outside of my authority under the *Act*.

Conclusion

Based on the above, I dismiss the portions of the tenant's Application seeking double the amount of the security deposit and compensation for expenses incurred in preparing for previous hearings.

In regard to the tenant's claim for compensation for costs incurred while attempting to enforce a previously awarded monetary order I decline jurisdiction. I note the tenant remains at liberty to pursue this portion of her claim through a court of competent jurisdiction.

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 26, 2014

Residential Tenancy Branch