



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The male Respondent (the Respondent) confirmed that he and the other Respondent received copies of the Applicant's dispute resolution hearing package sent by her by registered mail on March 11, 2014. In accordance with sections 89(1) and 90 of the *Act*, the Respondents were deemed served with the hearing packages on March 16, 2014, the fifth day after their mailing. Both parties also confirmed that they had sent and received one another's written evidence packages.

Preliminary Issue - Jurisdiction

The Respondent entered into written evidence a copy of a March 13, 2014 decision of another Arbitrator. In that decision, the Arbitrator considered the current Respondents' application under the *Act* to cancel a notice to end tenancy, to obtain monetary compensation and to reduce their rent. The Arbitrator declined jurisdiction to hear that application as she found that the applicants (the current Respondents) "were not tenants of the respondents; rather, they were occupants, or roommates. As the Arbitrator found that the respondent in the application before her (the current Applicant) did not meet the definition of a landlord under the *Act*, as the respondent was herself a tenant, the Arbitrator found that she did not have jurisdiction to hear the matter before her.

In their written evidence, the current Respondents maintained that the Applicant could not apply for dispute resolution because The other Arbitrator's decision had determined that this living arrangement was not one that constituted a tenancy under the *Act*.

After reviewing The other Arbitrator's decision, the written evidence of the parties and their sworn testimony, I find that there has already been a final and binding decision made by another Arbitrator appointed under the *Act* in which it was determined that this tenancy does not fall within the jurisdiction of the *Act*. I therefore find that this current application is *res judicata*. In other words, the question as to whether or not this tenancy was within the jurisdiction of the *Act* has already been conclusively decided and cannot be decided again. As such, I find that I am without jurisdiction to consider this application for dispute resolution.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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 26, 2014

Residential Tenancy Branch