



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE WOLSTENCROFT REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlord KK ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord confirmed that she is the resident property manager for the "landlord company" named in this application and that she had authority to speak on behalf of the landlord company as an agent at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application.

The tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' written evidence.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Preliminary Issue – Jurisdiction to hear Application

Both parties agreed that a previous hearing between these same parties at this rental unit occurred on July 30, 2015 before a different Arbitrator. A decision was issued of the same date, following that hearing. The file number for that hearing appears on the front page of this decision. In that hearing, the landlord company applied for a monetary order for unpaid rent and for damage to the rental unit, to offset the monetary order with the security deposit and to recover the filing fee. The Arbitrator found that the landlord company was entitled to \$1,572.66 after deducting the \$700.00 security deposit. The landlord testified that she had not yet enforced the above monetary order against the tenant. The Arbitrator in that hearing was aware of the tenant's current application and hearing for this date, and she made findings and determinations that affect the tenant's Application at this hearing.

The Arbitrator in the previous hearing held as follows at pages 2 and 3 of her decision:

"I find he [the tenant] authorized the landlord to deduct amounts for cleaning, repairs to screens and to replace missing fobs from his security deposit. I find that the total amount for these three items is more than his security deposit so he would be entitled to no refund based on his permission to deduct these costs from his security deposit. His security deposit will be used in the calculation of the amount owed to the landlord."

Analysis of Preliminary Issue - Jurisdiction to hear Application

Section 38 of the *Act* requires the landlords to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and a tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords and at the end of the tenancy remains unpaid (section 38(3)(b)).

As the Arbitrator in the previous hearing already made a decision stating that the tenant authorized the landlords to deduct amounts from his security deposit which exceeds the

amount of the deposit, as per section 38(4)(a) of the *Act*, the tenant's security deposit cannot be doubled. Therefore, I find that I do not have jurisdiction to deal with the tenant's Application for double the amount of the security deposit and that I am *res judicata*, as this matter has been decided by a different Arbitrator.

As the tenant was unsuccessful in this Application, I find that he is not entitled to recover the \$50.00 filing fee from the landlords.

Conclusion

I am *res judicata* with respect to the tenant's application to recover double the amount of the security deposit. This matter has already been decided by a different Arbitrator at a previous hearing.

The tenant's application to recover the \$50.00 filing fee is dismissed without leave to reapply.

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: August 24, 2015

Residential Tenancy Branch

