



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and compensation reflecting the return of the security deposit. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

2 previous hearings have been held in disputes between these parties. Arising from an application by the tenant the first decision was issued by date of February 27, 2015. Pursuant to the decision the landlord's 10 day notice to end tenancy was dismissed, and the Arbitrator found that "tenancy continues until it is ended in accordance with the Act." Further, the Arbitrator noted that the tenant's application to cancel the landlord's 1 month notice to end tenancy for cause was withdrawn. Finally, the "remainder of the tenant's application" was dismissed.

Arising from applications by both parties, the second decision was issued by date of April 22, 2015. Pursuant to the decision an order of possession was issued in favour of the landlord on the basis of a 10 day notice to end tenancy for unpaid rent, different from the 10 day notice addressed in the earlier decision above which is dated February 27, 2015. Further, a monetary order was issued in favour of the landlord, reflecting compensation for unpaid rent for March and April 2015. Additionally, the Arbitrator found that the landlord had established entitlement to recovery of the filing fee, and the landlord was authorized to retain the tenant's full security deposit. As for the tenant's application, it was dismissed in its entirety without leave to reapply.

The tenant applied for review consideration of the decision and orders dated April 22, 2015. By review consideration decision dated May 15, 2015, the tenant's application was dismissed and the decision and orders dated April 22, 2015 were confirmed.

On May 04, 2015 the tenant filed another application. I note that this application was filed prior to the issuance of the review consideration decision of May 15, 2015.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, the various aspects of the tenant's application and my related findings are set out below.

\$450.00: *return of the security deposit*

In the decision dated April 22, 2015, the Arbitrator addressed the doctrine of *res judicata*, in part as follows:

The doctrine of *res judicata* prevents a party from obtaining another day in court after the first lawsuit is concluded by giving a different reason.

A final judgment on the merits bars further claims by the same parties based on the same cause of action.

Res judicata prevents a party from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment.

As the disposition of the security deposit was decided in the decision dated April 22, 2015, I decline jurisdiction to rehear this aspect of the tenant's application.

\$900.00: *the equivalent of 1 month's rent for "breaking agreement"*

I note the related findings of the Arbitrator in the decision dated April 22, 2015, in part as follows:

As I have made a finding that the tenancy ended in accordance with the Act, I also deny the Tenant's claim for one month's compensation for having her tenancy ended through the Notice.

Once again, as this particular aspect of the tenant's application has already been decided, based on the doctrine of *res judicata* I decline to rehear it.

\$1,500.00: *breach of the right to quiet enjoyment*

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Further, Residential Tenancy Policy Guideline # 6 speaks to the "Right to Quiet Enjoyment."

Having considered the limited documentary evidence and the affirmed testimony of the parties, I find that the tenant has failed to meet the burden of proving there was a breach of her right to quiet enjoyment. In the result, this aspect of the application in which the tenant seeks related compensation must be dismissed.

\$1,000.00: *compensation for "loss of rent from roommates" and "poor house condition as illegal unit"*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

This aspect of the tenant's application overlaps with certain issues already decided in the decision dated April 22, 2015, particularly with regard to the landlord's alleged role in the "loss of rent from roommates" claimed by the tenant. Accordingly, as to those aspects, based on the doctrine of *res judicata* I decline to rehear them.

As to other portions of this aspect of the tenant's application, having considered the affirmed testimony of the parties, in addition to the documentary evidence, which includes but is not limited to several photographs, I find that the tenant has failed to meet the burden of proving that the unit failed to comply "with the health, safety and housing standards required by law," or that it was not "suitable for occupation by a tenant. Accordingly, this aspect of the application must also be dismissed.

Conclusion

Following from the doctrine of *res judicata*, I decline to rehear certain aspects of the tenant's current application. Remaining aspects of the application are hereby 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: October 20, 2015

Residential Tenancy Branch

