



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNR MNDC FF

For the tenant: MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord, the spouse of the landlord, the tenant, and a translator for the tenant (the “translator”) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed that they received the documentary evidence package from the other party and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant was advised that her application was being dismissed in full due to the legal principle of *res judicata*, as she had already applied for compensation previously regarding bedbugs and her claim was dismissed. The file number of that decision is reference on the front page of this decision for ease of reference. The tenant was advised that increasing the amount of the claim for compensation for bedbugs from the previous claim, does not make it a new claim. Under the legal principal of *res judicata* I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim. With respect to res judicata, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

Issues to be Decided

- Has the landlord provided sufficient evidence to prove his claim?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The landlord submitted a copy of a tenancy agreement in evidence. The landlord's position was that the tenancy agreement was a fixed-term tenancy agreement. According to the agreement submitted in evidence, there is no date specified when rent is due each month. Furthermore, there are other conditions that are not in keeping with the *Act* such as charging a full month of rent for the security deposit which is a breach of section 19(1) of the *Act*, and requiring that the tenant's guests leave by 10:00 p.m.

The tenancy agreement submitted in evidence indicates that the tenancy began on October 1, 2014. The parties agreed that the tenant moved out of the rental unit on October 15, 2014 without notifying the landlord in writing as to the reason why she was ending the tenancy.

The landlord's monetary claim of \$6,500 is comprised of \$7,800, or 12 months of \$650 per month, less \$650 paid for October 2015 rent and less \$650 for the tenant's security deposit. The landlord confirmed that he did not submit any evidence of his attempts to re-rent the rental unit after the tenant vacated the rental unit. The landlord failed to provide any specific details of his attempts to re-rent the rental unit.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the landlord submitted a claim for monetary compensation, the onus of proof is on the landlord to provide sufficient evidence in support of his claim. I find that the landlord has provided insufficient evidence in support of his claim before me. Firstly, I find that the tenancy agreement submitted in evidence does not comply with the requirements of section 13 of the *Act* and section 12 of the *Residential Tenancy Act Regulation* (the "*Regulation*"). Secondly, I find that the tenancy agreement is not a fixed-term tenancy agreement as claimed by the landlord as it is not only lacking in detail, but is confusing. As a result, I find the tenancy agreement was a month to month tenancy agreement which began on October 1, 2015.

Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) **A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.**

[my emphasis added]

Based on the above, I find that by failing to provide evidence that he attempted to re-rent the rental unit, the landlord has failed to comply with section 7 of the *Act* and has not done what is reasonable to minimize any damage or loss. Therefore, **I dismiss** the landlord's application in full, **without liberty to reapply**.

I CAUTION the landlord to comply with section 7 and 13 of the *Act*, and with section 12 of the *Regulation*, in the future.

Conclusion

The applications of the tenant and the landlord are dismissed in full.

As there was no claim by either party towards the security deposit and no details were provided regarding whether a forwarding address has been provided as required by the *Act*, I make no findings regarding the security deposit in this matter.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: November 30, 2015

Residential Tenancy Branch

