



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"). The tenant applied for the return of her security deposit, for a monetary order for the cost of emergency repairs, for a rent reduction for repairs, services or facilities agreed upon and not provided, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The tenant and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the start of the hearing, the landlord provided a file number of a previous decision, the file number of which has been included on the cover page of this decision for ease of reference. In that decision dated September 19, 2016 (the "previous decision") the undersigned had granted a monetary order to the landlord regarding the same tenancy as the matter currently before me, and offset the monetary claim of \$1,469.00 by authorizing the landlord to retain the tenant's full security deposit of \$700.00 in partial satisfaction of the landlord's monetary claim. The landlord was also granted a monetary order in the amount of \$769.00 against the tenant and in that decision it was undisputed that the landlord has waived May and June 2016 rent arrears against the tenant.

In the tenant's application before me, the tenant has applied to retain her security deposit. I explained to the parties, that I cannot re-hear and change or vary a matter already heard and decided upon under the legal principle of *res judicata*.

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 judgment of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In light of the above, I am unable to hear the tenant's claim for the return of her \$700.00 security deposit as the landlord has already been authorized to retain the full security deposit towards rent arrears.

In addition, a Mutual Agreement to End a Tenancy between the parties dated April 20, 2016 (the "mutual agreement") was submitted in evidence by the parties ending the tenancy effective June 30, 2016. As a result, I find the tenant's application for a rent reduction to be moot as the tenancy had already ended at the time the tenant applied for dispute resolution.

I also note that the tenant did not attend the hearing scheduled for September 1, 2016 when the landlord's monetary claim was considered unopposed by the tenant resulting

in the previous decision. Furthermore, the tenant has not filed an Application for Review Consideration of the previous decision.

Given the above, I find that it is not necessary to proceed with the remainder of the tenant's monetary claim as the tenancy has ended, the parties reached a mutual agreement dated April 20, 2016 to end the tenancy, and the tenant's security deposit has already been decided upon and the landlord has been authorized to retain it in full.

Finally, there is no dispute that the landlord waived May and June 2016 rent which more than exceeds the remainder of the tenant's monetary claim.

Conclusion

I am unable to hear the tenant's claim for the return of her security deposit due to the legal principle of *res judicata*.

The tenancy has ended by way of a mutual agreement between the parties. As a result, the tenant's claim for a rent reduction is now moot.

The remainder of the tenant's application is dismissed due to the previous decision which indicates that the landlord waived two months of rent which exceeds the remainder of the tenant's Application.

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: October 19, 2016

Residential Tenancy Branch