



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for cost of emergency repairs - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.(not paid)

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenants provided an evidence package to the Residential Tenancy Branch and the Landlord the day before the hearing. It is noted that the Tenants’ application is dated July 20, 2016 and the tenancy ended in October 2015. The Tenants state that they were not able to gather and provide their documentary evidence sooner as they could not find the documents. The Landlord has not yet seen the evidence package. The Tenants ask for an adjournment in order for the evidence to be received. The Tenants confirm that their claims are limited to seeking compensation for past illegal rent increases and for the return of the security deposit. It is noted that the relevant evidence contained in the Tenants’ evidence is comprised of documents in relation to the claimed illegal rent increases. The Tenants also reference a previous Decision dated April 20, 2016 that the Tenant argues notes the Tenants are at liberty to make further claims and the Tenants legal counsel argues that this includes the claims in relation to the rent.

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. Having reviewed the previous Decision and noting that the matter of the past rental increases was fully dealt with in that previous Decision, I find that res judicata applies and the Tenant's claim in relation to past illegal rent increases must be dismissed. As the evidence for which the adjournment is being sought is in relation to a matter that is dismissed, I both exclude that evidence and deny the request for an adjournment.

I note that although the Tenants claim return of the filing fee the Tenants did not pay a filing fee. I therefore dismiss the claim for its recovery. As the Tenants limited their claim to the matters of rent and the security deposit and as the tenancy ended some time ago I dismiss the claim for emergency repairs.

Issue(s) to be Decided

Are the Tenants entitled to return of the security deposit?

Background and Evidence

The tenancy started in 2000 and ended on October 31, 2015. At the outset of the tenancy \$450.00 was collected as a security deposit. The Landlords purchased the rental unit in 2004. There is no move-in condition report. Tenants did not provide its forwarding address until the date of the hearing, while at the hearing. The security deposit has not been returned.

The Tenants claim return of double the security deposit.

Analysis

Section 23 of the Act requires that at the start of a tenancy, a landlord and tenant must together inspect the condition of the rental unit and the Landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that where a landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As there is

no move-in condition report I find that the Landlord's right to claim against the security deposit for damage to the unit is extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. As the Landlord has now received the Tenant's forwarding address I find that the Landlord has until February 3, 2017 to return the security deposit of \$450.00 or make an application claiming against the security deposit. The Landlord may not retain the security deposit while making a claim for damages to the unit given the extinguished right to claim against the security deposit for damage to the unit.

I dismiss the Tenants' claim for return of the security deposit with leave to reapply should the Landlord fail to act as required by the Act.

Conclusion

The Tenants' application is dismissed with the exception of the claim for return of the security deposit which is dismissed with 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: January 20, 2017

Residential Tenancy Branch