



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF O

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 7, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for recovery of the filing fee paid to make the Application; and
- other unspecified relief.

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by P.C., an agent. Both the Tenant and P.C. provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Application package was served on the Landlord by registered mail. Although neither the Tenant nor P.C. could remember when it was served or received, P.C. acknowledged it had been received and that he had had sufficient opportunity to consider it. Pursuant to section 64 of the *Act*, I find the Landlord was sufficiently served with the Application package for the purposes of the *Act*.

The Tenant's Application claimed \$1920.00 for an alleged overpayment of rent dating back to 2013. The claim was summarized in a Monetary Order Worksheet, dated April 6, 2017, which was submitted with the Tenant's evidence. The Application and supporting documentary evidence suggested the Tenant believed rent to have been incorrectly calculated dating back to the beginning of the tenancy on or about February 1, 2013.

However, on July 11, 2016, an arbitrator at the Residential Tenancy Branch issued a decision, which was subsequently corrected in a decision issued on August 12, 2016. In it, the arbitrator allowed the Landlord's request to increase pad rent for a number of units in the manufactured home park. Specifically, the Tenant's pad rent was increased by 9.1% to \$365.49.

I find that due to section 70(3) of the *Act* and the legal principal of *res judicata*, I cannot grant the Tenant's request to hear the issue of the pad rent as this matter was already heard and decided upon, and a final and binding decision was issued on August 12, 2016, awarding the Landlord the pad rent increase described above. The Tenant's opportunity to address her claim there had been an overpayment of rent since the start of the tenancy was at that hearing. I have no power to change the decision of the previous arbitrator.

In addition, section 7 of the *Act* requires an applicant to take steps to do what is reasonable to minimize their damage or loss. In this case, it was not until April 7, 2017 – more than four years after the tenancy began – that the Tenant made the Application for an alleged overpayment of rent. It appears the Tenant merely disagreed with the arbitrator's decision dated August 12, 2016, and is now seeking a way to minimize the impact of the increased pad rent.

Accordingly, based on the legal principle of *res judicata*, and the Tenant's failure to take steps to minimize her damage or loss, I find that the Tenant's Application 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 *Manufactured Home Park Tenancy Act*.

Dated: September 12, 2017

Residential Tenancy Branch