



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for Monetary Order pursuant to section 67, for an Order to retain the tenant's security deposit pursuant to section 38, and a return of the filing fee pursuant to section 72.

Following a review of a decision rendered by an Arbitrator with the *Residential Tenancy Branch* on June 13, 2017, I find that the issue of the security deposit has previously been decided at a hearing between the parties. In the Arbitrator's decision of June 13, 2017 the landlord was ordered to return the security deposit to the tenant.

The legal principle of *res judicata* prevents a plaintiff 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. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

I therefore find that this current application regarding a return of the security deposit is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. I will focus solely on the application for a monetary award and a return of the security deposit.

Analysis

While tenant, C.J., attended the hearing by way of conference call, the landlord did not, although I waited until 1:15 P.M. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:00 P.M.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution proceeding - The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Conclusion

In the absence of the landlord's participation in this hearing, I order the application for a monetary award and a return of the filing fee dismissed without liberty 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: November 7, 2017

Residential Tenancy Branch