



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL
MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlord applied for a Monetary Order for damages and compensation, to retain the security deposit towards compensation owing and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenants applied for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and one Tenant were present for the teleconference hearing. Neither party was in agreement as to whether the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served as required.

Preliminary Matters

The Tenants submitted in their evidence that this matter had been heard previously through cross-applications for Dispute Resolution. A decision and Monetary Order issued October 3, 2017, awarded \$1,950.00 to the Tenants. The Landlord applied for a review consideration and was denied a new hearing in a review consideration decision dated October 18, 2017.

The Landlord named on this dispute, W.M. submitted at this hearing that the Landlord, Y.M. was not correctly named on the previous decision. He stated that both himself and Y.M. were originally named on the tenancy agreement, but Y.M. was removed later, naming only W.M. as the Landlord. W.M. testified that Y.M. is the owner of the home and he rented from her and acted as the Landlord.

Despite the claims of W.M. regarding the previous decision, I find that it was based on

an application submitted by Y.M. and therefore the correct party should have been named by the applicant. It was also Y.M. that applied for a review consideration.

As a previous decision on this matter has been issued, I find that the legal principle of *res judicata* applies to this matter. *Res judicata* applies to matters which have previously been heard and decided on in a court of competent jurisdiction and states that once a matter has been decided, the case cannot be re-heard.

As this was a cross-application, the Tenant stated that the only claim that was new since the last hearing was his claim for bailiff costs. However, I find insufficient and conflicting evidence to establish that any claims from this tenancy remain outstanding, or that further claims have arisen since the previous decision was issued.

Based on the conflicting statements from both parties, I can also not confirm that evidence was served to the other party as required. Instead, I find that these matters had previously been heard and neither application should have been filed. Therefore, I decline to award the recovery of the filing fee to either party.

Based on the principle of *res judicata*, I dismiss both applications without leave to reapply.

Conclusion

I find that this matter was resolved by a decision from the Residential Tenancy Branch on October 3, 2017. As a result, neither parties' claims can be reheard based on the legal principle of *res judicata*. Therefore, both applications are 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 *Residential Tenancy Act*.

Dated: September 07, 2018

Residential Tenancy Branch