



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for:

- A monetary award for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The landlord did not attend the hearing which lasted 10 minutes. The tenant attended with their family member and counsel. The teleconference line remained open for the duration of the hearing. An individual who identified themselves as a personal friend of the agent of the corporate landlord called in saying that they were informed the landlord could not attend the hearing at the scheduled time. The personal friend had no further information regarding the landlord's inability to attend the hearing and provided no evidence of the circumstances that prevented the landlord from pursuing their own application. The personal friend did not seek an adjournment of the present application.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided no documentary evidence in support of their application.

There was a previous decision under the file number on the first page of this application. In that decision a monetary award in the tenant's favour as against the landlord for double the amount of the security deposit was issued.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

The applicant did not attend the hearing by 1:40 pm. The applicant's personal friend provided no cogent information on why the applicant was not in attendance.

Furthermore, the applicant has provided no documentary evidence in support of their application and there is no indication that the application has any merit whatsoever.

As the applicant failed to attend the hearing to pursue their application, and the respondent appeared and was ready to proceed, I dismiss the landlord's claim without leave to reapply.

Residential Tenancy Policy Guideline #17 provides that the arbitrator will order the return of the security deposit on a landlord's application to retain all or part of the security deposit. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

However, the principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. I find that there has been a final and binding decision already issued as regards the security deposit for this tenancy under the file number on the first page of this decision. As such, I find that the issue of the security deposit for this tenancy has already been decided and I decline to issue an additional order.

Conclusion

The landlord's application is dismissed in its entirety 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: October 1, 2019

Residential Tenancy Branch