



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OT

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy (the Act)* for:

- tenant's application for other issues including monetary compensation and security deposit pursuant to sections 38 and 67 of the *Act*.
- authorization to claim the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. I verified the names of the landlord and tenant on affirming both parties.

The landlord acknowledged receipt of the tenants' application for Dispute Resolution and evidentiary materials, and the tenant acknowledged receipt of the landlord's evidentiary materials. I find both parties were served in accordance with section 88 and 89 of the *Act*.

Issues to be Decided

- Is the tenant entitled to the return of the security deposit pursuant to section 38 and 67 of the *Act*?
- Is the tenant entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?
- Is the tenant entitled to recover the filing fee for this application from the pursuant to section 72 of the *Act*?

Preliminary Matter - Jurisdiction

At the commencement of the hearing the landlord testified that this tenancy was the subject of previous hearing under the file numbers provided on the first page of this decision. One of the hearings was dismissed with leave to re-apply and the second hearing took place on November 12, 2019 and dealt with the issues of the security deposit, unpaid rent damages, unpaid rent, loss or money owed and the recovery of the filing fee which were adjudicated. The tenant did not attend that hearing.

The tenant testified that she was unable to attend the previous hearings and now wished to obtain her security deposit of \$519.45 after deducting the repairs to the ceiling and utilities as agreed with the landlord previously.

The landlord testified that the issues before me had already been dealt with at the previous hearing and the tenant should have applied for a review of the decisions within the time limits.

In the written Decision dated November 12, 2019 the other Arbitrator found as follows:

- The tenant although they did not appear at the hearing, had been properly served with Notice of the Hearing and the landlord's evidentiary materials in accordance with Sections 89 and 90 of the *Act*;
- There was a security deposit of \$875.00 with respect to the tenancy;
- The landlord was entitled to apply the security deposit to the order for damages and reimbursement of the filing fee; and
- After application of the security deposit, the landlord was entitled to a Monetary Order in the amount of \$1,374.30 including the \$100.00 filing fee.

The security deposit for this tenancy was \$875.00 and the landlord was entitled to retain the security deposit in partial satisfaction of the monetary claim. The landlord was entitled to a monetary award for \$1,374.30 including the filing fee.

As the previous Arbitrator adjudicated the issues before me, I find I have no standing to make a determination in the current matter.

The legal principle of *res judicata* prevents an applicant from pursuing a claim already conclusively decided.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the same parties are involved.

Conclusion

As I am without jurisdiction to consider this matter, the tenant's application is dismissed without leave to reapply. The final and binding decision issued on November 12, 2019, pertaining to this tenancy remains in effect.

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: April 03, 2020

Residential Tenancy Branch