



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On May 1, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") for a monetary order for the return of their security deposit, for a monetary order to recover their rent for April and May 2020, and the recovery of the filing fee. The matter was set for a conference call.

Both the Tenant, the Landlord and their respective legal counsels attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Tenant entitled to a monetary order for damages or compensation under the *Act*?
- Is the Tenant entitled to the recovery of their security deposit for this tenancy?
- Is the Tenant entitled to the recovery of her filing fee?

Preliminary Matter – Amendment Application

At the outset of the hearing, it was noted by this Arbitrator that the Tenant had included an amendment requested in their evidence submissions, received by the Residential

Tenancy Branch (RTB) on May 26, 2019, requesting to increase her monetary claim from \$15,100.00 to \$26,010.62.

The Landlord testified that he had received the Tenant's amendment request and requested that the Tenant's amendment request not be allowed as they did not have sufficient time to prepare.

Section 4.6 of the *Residential Tenancy Branch Rules of Procedure* states the following:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

I accept the Landlord's testimony that they had not received the Tenant's amendment request as required. I find that the Landlord was given insufficient time to prepare their response to the Tenant's additional monetary claim.

I find that the Tenant failed to serve their amended application, to the Landlord and the RTB, for an increase to their monetary claim in the allowable time limit permitted under *Rule of Procedure 4.6*. Consequently, the Tenant's application to increase her monetary claim is therefore dismissed with leave to reapply.

Preliminary matter- *Res Judicata*

The Landlord's submission brought to this Arbitrator's attention that these parties had a previous Dispute Resolution hearing with the Residential Tenancy Branch. The Landlord submitted that there had already been a hearing regarding the security deposit

and the April and May 2020, rent, which the Tenant was applying for in this application. A copy of the previous decisions had been submitted into evidence by the Landlord.

Res judicata is the legal doctrine preventing, the rehearing of an issue that has been previously settled by a decision determined by an Officer with proper jurisdiction.

I have read the previous decisions submitted into evidence by the Landlord, and I find that the principle of *res judicata* bars me from considering the Tenant's application in. As these matters had already been determined in the final and binding decision dated May 5, 2020.

Analysis

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this hearing.

Conclusion

I dismiss the Tenant's application 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: June 1, 2020

Residential Tenancy Branch