



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 for compensation 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 the Landlord's legal counsel (the "Landlord") 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.

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 their 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 application in their evidence submissions, received by the Residential Tenancy Branch (RTB) on May 26, 2019, requesting to increase their monetary claim from \$14,500.00 to \$28,200.00.

The Landlord testified that they had not received the Tenant's amendment application and requested that the Tenant's amendment 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 application 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 their monetary claim is therefore dismissed with leave to reapply.

Preliminary Matter – Tenant's Disruption to Proceedings

When the Tenant was advised that their amendment application would not be considered due to improper service and insufficient timelines, the Tenant began disrupting these proceedings.

The Tenant immediately stated that they could no longer hear the Arbitrator, and then hung up. The Tenant called back into these proceedings for a second and third time, each time they announced themselves and then hung up.

The Tenant called back in to these proceedings a fourth time, without announcing themselves, this time the Tenant remained on the line without disconnecting but refused to acknowledge their attendance at these proceedings. The Tenant was provided with three opportunities to identify themselves but said nothing. After the third request to identify was not responded to this Arbitrator disconnected the party.

This Arbitrator confirmed that all four calls, made by the Tenant, came from the same phone number.

The Landlord expressed frustration at the Tenant's behaviour stating that they believed, the tenant was "playing games."

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 2020, rent for this tenancy, 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 decision submitted into evidence by the Landlord, and I find that the principle of *res judicata* bars me from considering the Tenant's application in regard to the security deposit and the April 2020, rent. As these matters had already been determined in the final and binding decision dated May 15, 2020.

I will continue in these proceedings in regard to the Tenants claim for the recovery of their May 2020, rent in the amount of \$4,800.00

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I called into the hearing, and the line remained open while the phone system was monitored for 16 minutes and the only participant who called into and remained in the hearing during this time was the Landlord. Therefore, as the Tenant did attend the hearing but refused to participate in these proceedings by 1:46 p.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenants' application without leave to reapply.

I find that the Application for Dispute Resolution has been abandoned.

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 2, 2020

Residential Tenancy Branch