



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*;
- monetary order for the return of the security deposit pursuant to section 38 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.

The tenant testified the landlord was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail in March 2020. The landlord acknowledged receipt of the tenants' application for Dispute Resolution and evidentiary materials, I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*. The tenant could not confirm the registered mailing Canada Post tracking number or the exact date of registered mailing.

The landlord's counsel confirmed that he had served the landlord's evidentiary package to the tenant's advocacy group.

Preliminary issue – Conflict of Interest

I undertook a conflict of interest in the interest of impartiality and verification on the commencement of the hearing as I personally knew a person named JP. The landlord JP confirmed that he was not married to Ms. S and did not know me personally. I find it would be reasonable to continue with the hearing as there was no conflict of interest.

Issues to be Decided

- Is the tenant entitled to a monetary order for damage or compensation pursuant to sections 51 and 67 of the *Act*?
- Is the tenant entitled to the return of the security deposit pursuant to section 38 and 67 of the *Act*?

Jurisdiction

At the commencement of the hearing the parties affirmed this tenancy was the subject of previous hearing under the file number provided on the first page of this decision. This hearing took place on January 14, 2020.

The tenant affirmed that the issue was brought up in front of the previous Arbitrator, but the previous Arbitrator could not deal with it as the tenant failed to provide the evidence.

Counsel argued that the issues before me had already been dealt with at the previous hearing in front of the Arbitrator and that the tenant failed to provide any evidence. Counsel argued that the tenant should have applied for a review of the decision within the time limits and that the tenant was attempting to reargue the case again despite the settlement agreement between the parties.

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 and prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim 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 January 14, 2020 pertaining to this tenancy remains in effect.

The application is dismissed as I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision by another Arbitrator appointed under the *Act*.

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 January 14, 2020 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: July 07, 2020

Residential Tenancy Branch