



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 the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the tenant's security deposit of \$550.00, totalling \$1,100.00, pursuant to section 38; and
- a monetary order of \$12,268.25 for compensation under the *Act, Residential Tenancy Regulation*, pursuant to section 67.

The applicant tenant did not attend this hearing, which lasted approximately 16 minutes. The respondent landlord, the landlord's agent, and the landlord's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The hearing began at 1:30 p.m. and ended 1:46 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's agent, the landlord's lawyer and I were the only people who called into this teleconference.

The landlord confirmed that his agent and lawyer had permission to speak on his behalf at this hearing. The landlord's lawyer confirmed the rental unit address during this hearing. The landlord's lawyer provided an email address to send a copy of my decision to the landlord after this hearing.

I informed the landlord, his agent, and his lawyer that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. They all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord, his agent and his lawyer. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord's lawyer confirmed that the landlord did not submit any documentary evidence for this hearing.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* states:

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 re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or*
- **a tenant's application for the return of the deposit.***

unless the tenant's right to the return of the deposit has been extinguished under the Act. 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.

As per the above, I am required to deal with the tenant's security deposit because the tenant has applied for the return of double its amount. However, the tenant did not appear at this hearing to support this application and it was dismissed without leave to reapply, as noted above.

The landlord's agent confirmed that the tenant paid a security deposit of \$550.00 to the landlord.

The landlord's lawyer stated that there was a previous RTB decision of May 12, 2021, from a different Arbitrator, which did not award the security deposit to either party because it had already been dealt with at a previous RTB hearing in January 2019. She said that the landlord was ordered to retain the tenant's security deposit in the previous RTB hearing in January 2019. She claimed that the tenant has been repeatedly applying for monetary orders, including the return of the security deposit, even though it has already been decided. She also referenced a previous RTB decision from October 2020. The file number for those applications appear on the front page of this decision. The tenant provided the file numbers for both the May 2021 and October 2020 files, in the online details of the description for this application.

Neither party provided copies of the above RTB previous decisions. I located the decisions for the above three hearings in the online RTB system and reviewed them.

The landlord's lawyer read aloud the following paragraph from page 6 of the May 12, 2021 decision:

Section 77(3) of the Act provides that a decision or an order of the director under this Part is final and binding on the parties. Not raised by the Parties at the hearing but noted in the previous Decision dated January 17, 2019, the Landlord was authorized in that Decision to keep the security deposit that was set off against the Landlord's entitlement to unpaid rent. I note that no mention of this authorization was made in the subsequent Decision dated October 19, 2020 that gave the Tenant leave to reapply for return of the security deposit unless the Landlord either made an application to claim against the security deposit or returned the security deposit. However, as the security has been dealt with in the previous Decision dated January 17, 2019, I find that neither Party is entitled to an order in relation to the security deposit. I therefore dismiss the Tenant's claim for return and the Landlord's claim for retention of the security deposit.

I find that the above paragraph from the May 12, 2021 decision is clear. I find that the tenant's security deposit has already been dealt with in a previous RTB decision of January 17, 2019. I find that the previous RTB decision of January 17, 2019, ordered the landlord to retain the tenant's security deposit of \$550.00.

Therefore, the tenant's security deposit claim cannot be reheard or dealt with again at any future RTB hearings. The tenant is past the 15-day period to review the above decisions at the RTB, and this is not a review hearing. This is a new application made by the tenant, asking for the return of double the amount of her security deposit.

Accordingly, I do not make any orders regarding the tenant's security deposit, as it is *res judicata*, meaning it has already been dealt with in prior RTB decisions from January 17, 2019 and May 12, 2021.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The tenant's security deposit has already been dealt with in previous RTB decisions from January 17, 2019 and May 12, 2021, so it is *res judicata*.

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: November 19, 2021

Residential Tenancy Branch