



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord, the landlord's wife and tenant B.D. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision.

Preliminary Issue- Issue Estoppel

The tenant submitted that the landlord, via the landlord's agent, has already filed this

exact application for dispute resolution with the Residential Tenancy Branch and that in a Residential Tenancy Branch Decision dated April 28, 2022, the landlord's application was dismissed without leave to reapply. The April 28, 2022 decision was entered into evidence, the file number for the aforementioned decision is located on the cover page of this decision.

The April 28, 2022 decision states:

On September 10, 2021 the Landlord submitted an Application for Dispute Resolution (the "Application"), seeking relief pursuant to the Residential Tenancy Act (the "Act") for the following:

- a monetary order for unpaid rent or utilities;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30PM on April 28, 2022 as a teleconference hearing. Only the Tenant B.D. appeared at the hearing. No one called in for the Landlord. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Respondent and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Tenant and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 1:30PM on April 28, 2022.

Rule 7.3 of the Rules of Procedure states that if a party 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 reapply. As neither the Landlord, nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Landlord's Application, I therefore dismiss the Landlord's Application in its entirety without leave to reapply.

At the start of the hearing, the Tenant stated that they had previously consented to the Landlord retaining their security deposit. As such, I find that it is not necessary to consider if the Tenant is entitled to the return of their security deposit.

Conclusion

No one attended the hearing for the Applicant. As such, the Landlord's Application is dismissed without leave to reapply.

The landlord testified that his property management company filed the previous application on his behalf and applied for substituted service for that application. The landlord testified that the application for substituted service was dismissed with leave to reapply. The landlord testified that he did not know that the hearing proceeded after the substituted service application was dismissed. The substituted service decision is dated September 20, 2021. The landlord testified that he did not have notice of the April 28, 2022 hearing.

The Notice of hearing documents for the April 28, 2022 hearing were provided to the landlord's agent via email on October 6, 2021. The landlord's property management company, who was listed as the landlord on that application, did not withdraw the application for dispute resolution and the April 28, 2022 hearing occurred as scheduled.

Issue estoppel is a question of whether a decision-maker should exercise their discretion to allow an issue to proceed when certain criteria are met. Issue estoppel is designed to protect principles like judicial economy, consistency, finality and the integrity of the administration of justice.

Issue estoppel relies on a two-step analysis. First, an arbitrator considers whether the criteria for estoppel are met. If they are met, then the arbitrator must decide whether to exercise their discretion to apply the principle in the specific circumstances of the case by balancing the factors for and against the exercise of discretion.

The three pre-conditions for issue estoppel are:

1. The same question has been decided;
2. The parties or their privies were the same in both proceedings; and

3. The earlier decision was final.

Based on the April 28, 2022 decision, I find that the same questions have been decided, those being:

- Is the landlord is entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to retain the tenant's security deposit?
- Is the landlord entitled to recover the filing fee?

In the April 28, 2022 decision the landlord's application for the above was dismissed without leave to reapply. I find that the landlord was not permitted to file the exact same application a second time after the initial application was dismissed without leave to reapply.

Privies can be defined as having an interest in the subject of the action that parallels the interest of the party. I find that an agent is a clear example of a privy as the landlord's agent acted on behalf of the landlord. I note that in section 1 of the *Act*, the definition of landlord includes an agent.

Upon comparison of the two proceedings, I find that the named tenants are identical in both proceedings, and I find that the landlord and the landlord's agent are privies and are the same for the purpose of the two proceedings.

Section 77(3) of the *Act* states:

(3) Except as otherwise provided in this Part, a decision or an order of the director under this Part is final and binding on the parties.

Based on the landlord's testimony, I find that the landlord was aware of the original application for dispute resolution and was aware of the application for substituted service. The substituted service decision only made a finding relating to the allowable methods of service, it clearly did not withdraw or dismiss the landlord's application for dispute resolution filed on September 10, 2021. I find that it was the landlord and/or the landlord's agent's responsibility to either withdraw their application for dispute resolution or to serve the tenants as required by law, and in any event, to attend the April 28, 2022 hearing if it were not withdrawn.

The landlord did not file for Review Consideration, Correction or Clarification, and the April 21, 2022 decision was emailed to the landlord's agent via email on April 28, 2022.

Pursuant to section 77(3) of the *Act*, I find that the April 28, 2022 decision is final and binding.

I find that in the interest of finality and the integrity of the administration of justice, it would be unreasonable to hear the landlord's claim a second time when reasonable diligence on the part of the landlord could have prevented two separate hearings from occurring. The April 28, 2022 decision was final and binding, I find that to disregard that decision would put the integrity of the administration of justice in disrepute.

I exercise my discretion to dismiss the landlord's application for dispute resolution, without leave to reapply, due to issue estoppel.

Conclusion

The landlord's application for dispute resolution is dismissed 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: August 08, 2022

Residential Tenancy Branch