

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant testified that he served the Landlord with the Proceeding Package via registered mail on September 18, 2023. A registered mail receipt for same was entered into evidence.

The Landlord testified that she received the above mailing but it only included page ¼ of the Proceeding Package and that she contacted the RTB regarding same and they provided her with the missing three pages. The Landlord testified that despite not being served with all four pages, she wanted to proceed with this hearing.

As the Landlord eventually received the entire Proceeding Package, I find that the Landlord was sufficiently served for the purposes of the Act, with the Proceeding Package in accordance with section 71 of the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Preliminary Matters

The Tenant used the shortened version of the Landlord's first name in this Application for Dispute Resolution. In the hearing the Landlord provided the correct spelling of her first name. In accordance with section 64 of the Act I amend the Tenant's Application for Dispute Resolution to correctly spell the Landlord's legal first name.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Is the Tenant entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began in 2018, with a monthly rent of \$1,932.00, due on the first day of each month.

Both parties agree that they signed an email service agreement (RTB #51) which was entered into evidence.

The Landlord testified that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) via email on February 20, 2023. The Tenant testified that he received the Two Month Notice around that time. The Two Month Notice was entered into evidence and is dated February 20, 2023 and has an effective date of April 30, 2023.

Both parties agree that the Tenant did not pay any rent for March or April 2023. The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) via email on March 10, 2023. The Tenant testified that he received the 10 Day Notice around that time. The 10 Day Notice was entered into evidence and is dated March 10, 2023 and has an effective date of March 23, 2023.

Both parties agreed that before this hearing the parties had two previous hearings regarding the Two Month Notice and the 10 Day Notice. The file numbers for the previous disputes are located on the cover page of this decision. The Landlord entered the Decisions from the previous disputes into evidence.

In the Decision dated May 3, 2023 the Landlord applied for:

- an order of possession on an undisputed notice to end tenancy under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”);
- a monetary order for unpaid rent under section 67 of the Act; and
- authorization to recover the cost of the filing fee under section 72 of the Act.

The arbitrator did not consider if the Landlord was entitled to an Order of Possession as the tenancy had already ended. The Arbitrator found that the Tenant breached section 26 of the Act by failing to pay rent when it was due and the Landlord was awarded unpaid rent for March and April 2023 and the recovery of the \$100.00 filing fee. The Landlord was also awarded authorization to retain the Tenant’s entire security deposit in partial satisfaction of the monetary award.

In the June 23, 2023 Decision the Tenant applied for:

- cancellation of the Landlords’ Two Month Notice to End Tenancy for Landlords’ Use of Property (the Two Month Notice) under section 49 of the Act;
- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act; and
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act.

In the June 23, 2023 hearing the Arbitrator dismissed the entire application without leave to reapply because the tenancy had already ended so the application did not disclose a dispute that could be determined under the Act.

Analysis

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also 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 the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

A previous Arbitrator ordered that the Landlord was permitted to retain the Tenant’s security deposit in the May 3, 2023 Decision. I therefore find that this current application seeking the return of the security deposit is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

I note that I do not have authority to overturn a previous Residential Tenancy Branch Decision. The Tenant was informed that he may apply for Review Consideration or Judicial Review of the May 3, 2023 Decision. This is not an extension of any limitation period.

The tenant's application to recover their security deposit is dismissed without leave to reapply.

Is the Tenant entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Based on the Testimony of the parties I find that the Two Month Notice was emailed to the Tenant on February 20, 2023. In accordance with section 88 and 90 of the Act I find that the Tenant was deemed served with the Two Month Notice on February 23, 2023.

Based on the Testimony of the parties I find that the 10 Day Notice was emailed to the Tenant on March 10, 2023. In accordance with section 88 and 90 of the Act I find that the Tenant was deemed served with the 10 Day Notice on March 13, 2023. Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the Act. As agreed by the Parties and as set out in the May 3, 2023 Decision, the Tenant did not pay any rent for March or April 2023. I find that in accordance with section 46(1) of the Act this tenancy ended by way of the 10 Day Notice because the Tenant did not pay rent in accordance with section 26 of the Act.

As the effective date of the 10 Day Notice preceded the effective date of the Two Month Notice, I find that the tenancy ended by way of the 10 Day Notice before the Two Month Notice was to take effect. I find that the Two Month Notice is voided as the tenancy cannot end twice. As the Two Month Notice is void and the tenancy ended by way of the 10 Day Notice, the Tenant is not entitled to compensation under section 51 of the Act. The Tenant's application for compensation under section 51 of the Act is therefore dismissed without leave to reapply.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application for a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act is dismissed, without leave to reapply.

The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

I decline to proceed due to a lack of jurisdiction regarding the Tenant's application for a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 6, 2024

Residential Tenancy Branch