

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to section 60 of the *Manufactured Home Park Tenancy Act* (the *Act*) for a monetary Order of \$180.00 for compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord did not attend this hearing, although we waited until 11:10 a.m. in order to enable him to connect with this hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail. He provided the Canada Post Tracking Number to confirm his delivery of this package to the landlord. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

On January 7, 2011, the Residential Tenancy Branch received an evidence package from the landlord which included a written request for an adjournment because the landlord was outside the country until April 11, 2011. The tenant said that he did not receive the landlord's evidence package nor the landlord's request for an adjournment.

Issues(s) to be Decided

Has there been a previous decision of a Dispute Resolution Officer (DRO) on the same issue identified in the tenant's application?

Background and Evidence

The tenant applied for rebate of \$36.00 per month from July 1, 2010 until November 2010. He maintained that the landlord should not have been charging him \$36.00 per month for H.S.T. for his monthly pad rental for his manufactured home site.

The landlord submitted written evidence regarding a prior application for dispute resolution from the tenant. The landlord alleged that the tenant's August 30, 2010 application for dispute resolution sought a monetary Order for the same monthly H.S.T. charge the landlord started applying on July 1, 2010. The landlord noted that the tenant/applicant failed to attend the previous telephone conference call hearing on October 6, 2010. That day the DRO issued a decision dismissing the tenant's application without leave to reapply. Since the tenant's previous application had been dismissed, the landlord claimed that he should not be allowed to pursue this matter again if it indeed was the same application.

At the hearing, the tenant gave sworn testimony that his current application was the same application that he had submitted earlier. He said that he filed the current application when he missed the previous hearing. He testified that he did not notice that the previous DRO had dismissed his application without leave to reapply.

Analysis

The dollar amounts requested in the tenant's application for a monetary Order have changed as more months have elapsed. However, the tenant confirmed twice that his current application is directed at the same issue and seeks the same remedy sought in his previous application. On the basis of the tenant's sworn statement, I dismiss the tenant's current application because the previous DRO dismissed his application without leave to reapply.

In addition to the ruling in the October 6, 2010 decision, the legal principle of *res judicata* prevents a plaintiff from pursuing a claim already decided. It also precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue was decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy. The tenant's current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

Since the tenant had not received the landlord's evidence package, I read him important portions of the landlord's documents which helped him understand why the landlord maintains that the tenant is responsible for paying H.S.T. on his pad rental.

Conclusion

I dismiss the tenant's application for a monetary Order for the reasons outlined above.

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*.