



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for a monetary order for unpaid rent and to recover the filing fee for the Application.

The parties appeared and were affirmed into the hearing prior to a discussion of the preliminary issues. The parties were given an opportunity to make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary under section 67 of the Residential Tenancy Act (the "Act") and to recover the filing fee?

Background and Evidence

These parties were in previous dispute resolution regarding cross applications on November 18, 2010, with a Decision being issued on November 19, 2010. On relevant point, in that Decision, the Tenant was granted a monetary order for \$1,500.00, on November 19, 2010. The Tenant was issued a corrected monetary order against the Landlords for \$1,500.00, on January 28, 2011, which replaced the November 19, 2010, order.

The Landlord has applied for a monetary order of \$750.00, which comprises one half month's rent for November 2010, and in support, submitted that the Tenant did not pay the full rent of \$1,500.00 for November 2010, but only paid \$750.00.

The Landlord's Agent submitted that the Tenant has been paid \$750.00 of the \$1,500.00 monetary order and that as the Tenant failed to pay the full rent in November, the Landlord is entitled to a monetary order to offset the balance of the Tenant's monetary order.

The Landlord submitted Page 2 of the November 19, 2010, Decision, but did not include the full Decision.

I note that, after review, page 5 of the Decision states: "Therefore I find that the Tenant has fully paid rent through November 2010, and entitled to a monetary claim of \$1,500.00."

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

As the parties were advised at the hearing, the issue of the November 2010, rent was addressed at that hearing on November 18, 2010, and cannot be re-heard.

The principle of res judicata prevents a party from bringing to litigation not only a matter that was previously heard, but also a matter that should have been heard at that previous arbitration. Mr. Justice Hall of the Supreme Court of British Columbia, in the case Leonard Alfred Gamache and Vey Gamche v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd., Prince George Registry, Docket No. 28394 dated November 15, 1996, quoted with approval the following passage from the judgment of Henderson v. Henderson, (1843), 67 E.R. 313.

"In trying this question I believe I state the rule of the court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

The Supreme Court of British Columbia in Jonke v. Kessler, Vernon Registry, Docket No. 3416 dated January 16, 1991 held that the principle of res judicata applies to residential tenancy arbitration.

I therefore am bound by the earlier Decision and cannot consider the Landlord's application for a matter heard and decided on November 19, 2010.

In light of the above, I **dismiss** the Landlord's application, without leave to reapply, and the monetary order for \$1,500.00 corrected and issued on January 28, 2011 stands in full force and effect.

Conclusion

The Landlord's application 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: June 02, 2011.

Residential Tenancy Branch