



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNR FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent, for a monetary order for damage to the unit, site or property, for unpaid rent, and to recover the filing fee.

The tenants and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants stated that they did not receive an evidence package from the landlord. The tenants stated that they received the notice of hearing and the proof of service for the notice of hearing, however, did not receive additional evidence. The landlord did not provide corroborating evidence or witnesses to support the landlord's position that evidence was served on the tenants. As a result of the above, both parties were advised that I was excluding all evidence with the exception of the notice of hearing and proof of service for the notice of hearing due to the disputed testimony, however, would permit oral testimony from both parties regarding any documents before them during the hearing as an alternative.

Preliminary and Procedural Matter

At the start of the hearing, the agent was asked to describe the details of the \$5,000.00 monetary claim. The agent stated that the landlord was seeking \$5,000.00 due to the money owed related to previous monetary orders relating to the same tenancy. I explained to the parties, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

“...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.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In light of the above, I have not re-heard the matters already dealt with under previous applications. Previous decision file numbers have been included on the cover page of this Decision for ease of reference. The agent amended his monetary claim to \$350.00 in unpaid rent for the month of January 2012. The agent confirmed that January 2012 rent has not been considered in a previous arbitration hearing. Therefore, the monetary claim to be considered in this Decision will be \$350.00 in unpaid rent for the month of January 2012.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agree that the tenancy began approximately seven years ago. Rent in the amount of \$700.00 is due on the first day of each month.

The agent testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) by posting it to the tenants’ door on July 20, 2012 at 11:00

p.m. The tenants disputed receiving the 10 Day Notice. The tenants stated that they received the Notice of Hearing, but did not receive an earlier 10 Day Notice. The agent testified that he took a photo of the 10 Day Notice when it was posted on the door, however, failed to submit it as evidence to support his testimony.

The agent testified that the tenants failed to pay half of the rent for January 2012 and as a result, owe \$350.00 in unpaid rent for January 2012. The male tenant testified that Social Services pays the rent directly to the landlord. The agent confirmed that he was unsure how rent was paid to the landlord.

Analysis

Based on the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – As the documentary evidence of the landlord was excluded and the tenant disputed receiving the 10 Day Notice, there is no 10 Day Notice before me to consider. Therefore, **I find** the landlord has not met the burden of proof to prove that a 10 Day Notice was served on the tenants. Therefore, **I do not grant** an order of possession and **I dismiss** the landlord's application for an order of possession without leave to reapply.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage.

Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim for \$350.00 in unpaid rent – The agent testified that rent had not been paid for the month of January 2012. The tenants testified that rent is paid directly by Social Services to the landlord. The agent was unsure during the hearing as to how rent was paid to the landlord. The landlord failed to provide ledgers or other documentary evidence to support their claim that rent was not paid for the month of January 2012. Therefore, **I find** the landlord has failed to meet the burden of proof to prove that the tenants breached the *Act*, regulation or tenancy agreement by failing to pay rent for the month of January 2012. **I dismiss** the landlord's application for a monetary order due to insufficient evidence, without leave to reapply.

As the landlord was not successful with their application, I **do not** grant the recovery of the filing fee.

Conclusion

I find that prior monetary claims cannot be re-heard due to the legal principle of *res judicata*. The landlord may enforce these monetary orders in Provincial Court.

I do not grant the landlord an order of possession and dismiss the landlord's application without leave to reapply.

I dismiss the landlord's monetary claim for unpaid rent for January 2012 due to insufficient evidence without leave to reapply.

I do not grant the landlord the recovery of the filing fee.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision. I am also including information sheets on how to enforce monetary orders and orders of possession.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 26, 2012

Residential Tenancy Branch