

DECISION

Dispute Codes MNDC O

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and "other" although details of other were not provided in the details of dispute in the tenant's application.

The tenant, counsel for the landlords, and two agents for the landlords 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.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed to remove the law firm as a respondent to the application as they are not a landlord. By agreement of the parties, the law firm was removed as a respondent to this application.

The tenant's claim is for monetary order in the amount of \$25,000.00. The tenant did not include a breakdown of the amount being claimed in the details of dispute. The tenant stated that she was unable to provide certain details at the previous dispute resolution hearing in October 2010 regarding her claim which is why she was seeking \$25,000.00 again. 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 a previous application. Previous decision file numbers have been included on the cover page of this decision for ease of reference. Counsel for the landlords testified that it was their position that the amount being claimed by the tenant is for the identical issue already decided upon on October 10, 2010 and that *res judicata* applies. Counsel for the landlords also argued that the deadline for the tenant to file for dispute resolution has lapsed.

The tenant stated that she has not lived inside the rental unit since August 6, 2010, the day before a fire which occurred on August 7, 2010. Section 60 of the *Act* states that an application **must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned**. Section 3 of the *Limitation Act* also limits claims for damages to two years. Therefore, the deadline to file this application would have been at the latest, August 7, 2012. This application was filed October 12, 2012 which exceeds the latest deadline to file for dispute resolution.

Conclusion

I find that this matter has already been decided upon by an Arbitrator on October 1, 2010. As a result, the tenant’s monetary claim cannot be re-heard due to the legal principle of *res judicata*.

I find that the tenant filed for dispute resolution beyond the two year deadline as defined in section 60 of the *Residential Tenancy Act* and section 3 of the *Limitation Act*.

For the reasons specified above, **I dismiss** the tenant’s application in full, without leave to reapply.

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: January 08, 2013.