



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIMCHER INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

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Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 30, 2013, by the Tenants to obtain an Order of Possession, to allow the Tenants to assign or sublet because the Landlord's permission has been unreasonable withheld; and for other reasons.

The parties appeared at the teleconference hearing and gave affirmed testimony.

Issue(s) to be Decided

Can the matters pertaining to this application be heard or do they constitute res judicata?

Background and Evidence

The Landlord testified that she has served the Tenants twice with the Order of Possession that was granted to her in the November 6, 2012, decision.

The applicant Tenants testified that they were seeking to be granted possession of the rental unit and allowed to assign the lease because they believe they were given the authority to sell the manufactured home in the November 6, 2012, decision.

During the course of this proceeding I attempted to explain to the Tenants that in the November 6, 2012, decision the arbitrator listed key points of the evidence that was presented to him either during the hearing or in written format under the heading Background and Evidence. I further explained that the arbitrator's legally binding decision is found under the heading Analysis and Conclusion which clearly states that the Landlord is granted an Order of Possession effective April 30, 2013.

Analysis

Res judicata is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties after a final judgment was previously issued on the merits of the case.

In *McIntosh v. Parent*, 55 O.L.R. 553 (Ont. C.A.) at p. 555, the court defined the principle of res judicata as follows:

Any right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be-retried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right, question, or fact, once determined, must, as between them, be taken to be conclusively established so long as the judgment remains.

In this case the tenancy was ended by the November 6, 2012 decision which granted the Landlord an Order of Possession. The Tenants were served the Order of Possession twice. Therefore, I find that there is no provision under the *Residential Tenancy Act* to allow the matters pertaining to possession of the manufactured home site to be reconvened or reheard, as to do so would constitute res judicata.

Based on the aforementioned I hereby dismiss the Tenants' application without leave to reapply.

Conclusion

The Tenant's application is HEREBY 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 *Manufactured Home Park Tenancy Act*.

Dated: May 28, 2013

Residential Tenancy Branch

