



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, in the amount of \$3,000.00.

Both parties were represented at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a monetary Order for living with inadequate heat and hot water and for a screen door that did not function properly?

Background and Evidence

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution hearing on December 04, 2012. Residential Tenancy Branch records show that the hearing on December 04, 2012 dealt with the Tenant's claim for a monetary order of \$3,000.00; that the Tenant was claiming compensation for being without heat and hot water in the rental unit and for a screen door that did not function properly; and that her claim was dismissed in their entirety as the Tenant did not establish that emergency repairs were needed or that emergency repairs were completed by the Tenant.

The Tenant stated that at the hearing on December 04, 2012 she had intended to claim for compensation for living with the aforementioned deficiencies; that she did not intend to claim for the cost of emergency repairs; and that the Arbitrator would not consider her claim for living with the aforementioned deficiencies at the hearing on December 04, 2012. She stated that she is now seeking compensation for living with the deficiencies, as that claim was not considered at the previous hearing.

The Landlord stated that he understood this dispute was settled on December 04, 2012 and he does not understand why the matter is the subject of another dispute resolution proceeding.

Analysis

As the Tenant's claim for compensation for making emergency repairs to the plumbing, heating, and screen door have been previously considered and dismissed, I must now determine whether the Tenant has the right to seek additional compensation for living with the same deficiencies. This is a claim for compensation that could have been, but was not, included in the original application.

In determining the issue of Res Judicata, the following passages from the text: **Res Judicata**, Spencer-Bower and Turner, 2nd ed. (London: Butterworths, 1969) were expressly adopted and applied to circumstances analogous to those before me on this application in the decision of the Supreme Court of British Columbia In *London Life Insurance Company v. Zavitz et al*, [1990] S.C.B.C., Vancouver Registry No. C881705:

At page 359 of **Res Judicata** the required elements to support a plea of "former recovery" are set out:

- (i) That the former recovery relied upon was obtained by such a judgment as in law can be the subject of the plea.
- (ii) That the former judgment was in fact pronounced in the terms alleged;
- (iii) That the tribunal pronouncing the former judgment had competent jurisdiction in that behalf;
- (iv) That the former judgment was final;
- (v) That the Plaintiff, or prosecutor, is proceeding on the very same cause of action, or for the same offence, as was adjudicated upon by the former judgment;
- (vi) That the parties to the proceedings, or their privies, are the same as the parties to the former judgment, or their privies.

The learned author commented further at p. 380:

... where there is substantially only one cause of action, and it is a case, not of "splitting separable demands", but of splitting one demand into two quantitative parts, the plea [of **res judicata**] is sustained. In homely phrase, a party is entitled to swallow two separate cherries in successive gulps, but not to take two bites at the same cherry. He cannot limit his claim to a part of one homogeneous whole, and treat the inseparable residue as available for future use, like the good spots

in the curate's egg.

... Thus, where the omitted matter is a portion of the entire sum, or an item or parcel of the entire property, recoverable on a single cause of action, the judgment is a bar to any subsequent action in respect of such omitted matter.

In the Application for Dispute Resolution before me the parties are identical to the parties in the dispute resolution proceeding on December 04, 2013 and both claims relate to compensation for a problem with the heat, hot water, and a screen door. At that hearing the Arbitrator dismissed the claim for compensation relating to those deficiencies and that decision is final.

I find that this Application for Dispute Resolution is an attempt by the Tenant to split one homogenous claim into two quantitative parts. The Tenant could have sought compensation for living with the alleged deficiencies at the proceeding on December 04, 2013. I find that the Tenant does not have the right to file another claim for compensation arising from these same deficiencies.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply. The Tenant does not have the right to file an Application for Dispute Resolution for any form of compensation arising from these specific deficiencies.

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: September 24, 2013

Residential Tenancy Branch

