



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT CNR MNR OLC ERP RP LRE RR FF SS O

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to allow a tenant more time to make an application to cancel a notice to end tenancy, to cancel a 10 Day Notice for Unpaid Rent or Utilities, for an order directing the landlord to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, to comply with the Act, regulation or tenancy agreement, to suspend or set conditions on the landlord's right to enter the rental unit, for a monetary order for the cost of emergency repairs, for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, to serve documents or evidence in a different way than required under by the Act, and "other", although details of "other" are not clear in the tenant's application.

The landlord, the tenant, the tenant's spouse, and a legal advocate for the tenant appeared at the teleconference hearing and gave affirmed testimony.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed that a previous Decision was rendered on August 26, 2013 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. In the August 26, 2013 Decision, a previous Arbitrator found that she did not have jurisdiction to hear the dispute and indicated in her Decision that should the parties be unable to reconcile their differences, they could file an application in a different legal forum. The tenant confirmed that they did not file an application in a different legal forum. The tenant's legal advocate indicated that they attended the hearing hoping to dispute or challenge the original Decision dated August 26, 2013.

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 tenant's application due to a previous Arbitrator finding that she had no jurisdiction in the matter in her Decision dated August 26, 2013.

### Conclusion

I find that this matter has already been decided upon by an Arbitrator on August 26, 2013. As a result, the tenant's application cannot be re-heard due to the legal principle of *res judicata*. Based on the above, **I dismiss** the tenant's application as this matter has already been decided upon.

For the benefit of both parties, Section 79 of the *Act* provides a mechanism to request a Review of a Decision, however, submitting a further application for dispute resolution to dispute a Decision under the *Act* is not provided for under the *Act*.

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: October 23, 2013

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Residential Tenancy Branch

