



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution filed September 16, 2014 wherein he sought a Monetary Order for unpaid rent, money owed or compensation for damage under the Act, regulations or tenancy agreement and to recover the filing fee (the "Application").

The Landlord attended the hearing and provided affirmed evidence. The Tenants did not attend.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenants with the Notice of Hearing and the Application on December 17, 2014 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenants were served as of December 22, 2014.

### Preliminary Matters

I note the Landlord had limited English speaking skills and therefore I repeated back to the Landlord his testimony and submissions as it was given and confirmed that I understood his testimony and submissions.

The amount claimed by the Landlord on the Application was for \$3,245.55. In the details of dispute section on the Application the Landlord wrote the following:

*(1) Unpaid rent for January and February of 2013 \$3000 and Advertisement fee to re-rent the unit \$245.55. Total \$3245.55*

[Reproduced as Written]

The Landlord has filed two previous applications for dispute resolution relating to this tenancy; the Tenant also filed an application for dispute resolution. A decision on all three applications was rendered on May 13, 2013 wherein a different Arbitrator, found that, "... the landlord failed to take steps to mitigate any losses and dismiss his claim for any lost rent from November 1, 2012 onward."

In the present Application, the Landlord seeks compensation for lost rent for January and February 2013.

I find that the issues raised in this Application are the same issues raised by the Landlord in his applications heard April 26, 2013. As such, the principle of *res judicata* applies and I am not able to consider the Landlord's Application.

In a recent decision of the B.C. Court of Appeal, *Erschbamer v. Wallster*, 2013 BCCA 76, The Honourable Mr. Justice Tysoe, writing for the majority of the court, explained the doctrine of *res judicata* as follows:

[12] The general principles of the doctrine of *res judicata* were reviewed by this Court relatively recently in *Cliffs Over Maple Bay*. The doctrine has two aspects, issue estoppel and cause of action estoppel. In brief terms, issue estoppel prevents a litigant from raising an issue that has already been decided in a previous proceeding. Cause of action estoppel prevents a litigant from pursuing a matter that was or should have been the subject of a previous proceeding. If the technical requirements of issue estoppel or cause of action estoppel are not met, it may be possible to invoke the doctrine of abuse of process to prevent relitigation of matters.

[13] In *Cliffs Over Maple Bay*, Madam Justice Newbury set out the requirements of issue estoppel at para. 31 (from *Carl Zeiss Stiftung v. Rayner & Keeler Ltd. (No. 2)*, [1967] 1 A.C. 853 at 935, as quoted with approval in *Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248 at 254):

- (1) that the same question has been decided;
- (2) that the judicial decision which is said to create the estoppel was final; and,
- (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised, or their privies....

Additionally, the Landlord testified that he had applied for judicial review of the May 26, 2013 decision as he believes Arbitrator Maddia should not have rendered judgment on the issue of compensation for lost rent in January and February 2013. As this matter is squarely before the British Columbia Supreme Court, it is not appropriate for me to

consider it further. Even if the May 26, 2013 decision was not before the Supreme Court on judicial review, I would not be able to hear this application as I have no authority under the Act to change a previous decision.

### Conclusion

The issues raised in the Application were already determined by a previous arbitrator on May 26, 2013; further, the May 26, 2013 decision is before the B.C. Supreme Court on judicial review, therefore I have no jurisdiction or authority and the Application is dismissed.

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: January 14, 2015

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Residential Tenancy Branch

