



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEHL HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, O

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on January 30, 2015 to cancel a notice to end tenancy for unpaid rent and for a Monetary Order for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenant also applied for 'Other' issues.

An agent for the Landlord and the Tenant appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application and the parties confirmed receipt of each other's written evidence served upon them prior to the hearing.

### Preliminary Issues

At the start of the hearing, the Tenant was asked about the 'Other' issues he had elected on his Application. The Tenant explained that the other issues were in relation to his monetary claim. As a monetary claim had already been made by the Tenant on his Application, I dismissed the Tenant's Application for 'Other' issues as none were identified by him during the hearing.

Both parties confirmed that the Tenant had vacated the rental suite on February 5, 2015 after the Tenant had received a valid notice to end tenancy for unpaid rent. As a result, the Tenant's request to cancel the notice to end tenancy is now a moot point as the tenancy has now ended. Therefore, I dismiss the Tenant's Application to cancel the notice to end tenancy.

During the hearing, the Landlord requested unpaid rent from the Tenant. However, I informed the Landlord that he would be required to make an Application for any claim he may have.

## Background and Evidence

At the onset of the hearing, I informed the parties of the hearing process and asked the parties if they had any questions of the proceedings. At this point the Landlord explained that he was disputing the Tenant's Application because the monetary claim and the circumstances surrounding it had already been decided upon during a previous hearing (the "First Hearing") held between the same parties on January 26, 2015 (the file number for which is detailed on the front page of this decision).

The Landlord's agent submitted that the Tenant's claim was barred from being heard again because of the principle of res judicata applied in this case. The Landlord's agent explained that the First Hearing heard the Tenant's monetary claim for \$2,012.40 in expenses relating to laundry, food, utilities, accommodation and medical prescriptions incurred as a result of a bed bug infestation in his rental suite.

The Landlord's agent referred to the written decision of the previous Arbitrator dated January 28, 2015 (the "Original Decision") which he had provided as late evidence. The Landlord argued that the Original Decision had not been mailed to him by the Residential Tenancy Branch (the "RTB") so he had to locate it from the RTB website which publishes decisions. The Tenant confirmed that he had received a copy of the Original Decision from the RTB. Therefore, I allowed the Landlord to continue to reference that Original Decision.

The Landlord's agent explained that the Tenant was attempting to re-litigate the same claim which he argued in their First Hearing. The Landlord's agent states that the Tenant's Application made on January 30, 2015 for this hearing repeats the claims set out in the first Application which was made by the Tenant on January 2, 2015.

The Landlord's agent argued that the Tenant is using this Application to dispute points made by the Landlord's agent during the First Hearing; this despite being given an opportunity to rebut the response of the Landlord's agent during the First Hearing. The Landlord submitted two examples of this. The first one references page one of the Tenant's submission for this hearing which states:

*"Now that I have been able to review our conversation I would like to make note on the deserepancy between [Landlord's agent's name] con-fercation and what was stated in his written response dated Jan 20, 2015"*

[Reproduced as written with the exclusion of the Landlord's agent's name]

The Landlord also explained the Tenant has re-submitted two exhibits (pages 6 and 7 of the Tenant's documentary evidence) which formed part of the Landlord's response for the First Hearing. These exhibits have now been submitted for this hearing with the Tenant's handwritten notes on them.

The Landlord's agent also submitted that the Tenant is seeking to provide new evidence in support of his claims despite being given an opportunity to present this evidence for the First Hearing. The Landlord referred again to the Tenant's documentary evidence provided for this hearing to support this argument which states:

*"I have now went to my doctor's and health board to get more information for you. Also enclosing pictures and more receipts I have found"*

[Reproduced as written]

The Landlord stated that the Tenant provides a medical note which was also submitted by the Tenant for the First Hearing; the Tenant also provided information on the safety of chemicals used by pest control companies which would have been available to the Tenant for the First Hearing.

In his written submissions, the Landlord references a Supreme Court of British Columbia case (Jonke v. Kessler) which held that the principles of res judicata applies to residential tenancy arbitration.

After hearing the Landlord's agent's arguments against hearing the Tenant's Application, I invited the Tenant to explain his monetary claim which he had documented on his Application as "\$2,200.00 approx".

The Tenant confirmed that he had received and understood the Original Decision. The Tenant explained that he took the Original Decision to his friend for some advice. The Tenant's friend advised that while the Tenant had not been successful in his monetary claim for his tangible losses, he could still make a claim for hardship and suffering due to the bed bug issue.

The Tenant was asked to elaborate on what his \$2,200.00 claim comprised of and the reasons for making his Application. The Tenant stated that he felt this was an appropriate amount he wanted the Landlord to owe him for his suffering during the tenancy due to bed bug infestation which the Landlord had prior knowledge of.

In order for me to determine the Landlord's agent's submission that the Tenant's Application was barred from being re-heard, I asked the Tenant to explain his monetary claim in more detail.

The Tenant continued in detail to explain that the Landlord had known about bed bugs in his rental suite prior to his occupancy of it. The Tenant alleged that even though he informed another agent of the Landlord about this, the Landlord failed to have his suite professionally exterminated. As a result, the Tenant went to his doctor due to the bites on his body who informed him that he should leave the rental suite which he did. The Tenant explained that his rental suite was not treated until mid-December 2014 and that he was forced out of the rental unit to reside elsewhere over the Christmas period and incur losses as a result.

On examination of the Tenant's evidence provided during the hearing, I noted that the Tenant sought to provide the same testimony and evidence as to that which had been recorded by the previous Arbitrator. Although the Tenant did not make mention of any expenses he was claiming for, he provided virtually the same testimony and evidence he had relied in the First Hearing regarding the circumstances of the tenancy.

The Tenant continued his testimony that bed bugs had returned to his rental unit in January 2, 2015; however, another agent of the Landlord had arranged for professional treatment which seemed to have alleviated the problem. The Landlord's agent testified that he did not know anything about bed bugs returning to the rental suite and pointed to the fact that the Tenant alleges this to have taken place on January 2, 2015 but no mention was made of this in the First Hearing by the Tenant.

### Analysis

I have considered the Landlord's assertion that the Tenant's Application should not be determined because the principle of res judicata applies. I make my finding in this respect by considering the oral and documentary evidence provided by both parties during this hearing.

The doctrine of *res judicata* prevents a party from obtaining another day in court after the first lawsuit is concluded by giving a different reason. The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit are bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. A final judgment on the merits bars further claims by the same parties based on the same cause of action.

*Res judicata* prevents a party from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. *Res judicata* also prevents a party from arguing issues that should have been before the court in a previous action.

In this case, I find that the Tenant seeks to provide virtually the same evidence in this hearing to make a claim for compensation as he did during the First Hearing. Notwithstanding the Tenant's argument that he is now claiming for hardship and not the monetary losses he was seeking in the First Hearing, I turn to the Arbitrator's findings made after the First Hearing, which states in part:

*"With regard to the tenant's claim concerning bedbugs; the landlord has agreed that there were bedbugs found in the building and I am satisfied that the landlord acted expediently in dealing with the bedbugs by contacting a pest control company as soon as the first bedbugs were found in another unit. The tenant has insufficient evidence to show that his unit was also suffering with bedbugs at that time. When it was determined that bedbugs were present in the other units the landlord again acted in a timely manner to have treatments on all the units carried out.*

*I must balance the landlord's right to act in a timely manner to eradicate the bedbugs against any loss in the value of the tenancy for the few days that the treatments for bedbugs took place. I find the treatments in the tenant's unit were minimal and therefore would cause minimal disruption to the tenancy."*

[Reproduced as written]

The previous Arbitrator made a finding that the Landlord had acted in a timely manner to deal with the bed bug issue. As a result, the previous Arbitrator determined that the Tenant was not entitled to the monetary compensation claimed resulting from this.

Following from this, I find that if the previous Arbitrator determined that the Landlord had not breached the Act in dealing with the bed bug issue, then it would not be appropriate for me to determine the Tenant's case for hardship based on the same evidence being provided by the Tenant. Furthermore, I find that the Tenant did make a claim for the losses he had endured in the previous hearing and I find that the Tenant is now seeking to argue and deal with the same issues which were decided upon in the First Hearing by changing the nature of monetary relief being sought. I find it would constitute *res judicata* to hear a claim where the circumstances and evidence remains the same as that in a previous hearing but the nature of the compensation being sought is changed.

In addition, I also find that the Tenant seeks to introduce new evidence, such as photographs in order to dispute facts that were determined in the First Hearing. The principle of *res judicata* prevents a party from making multiple claims over and over again and in this case, I find that the Tenant is not entitled to make another claim because he purports to have new evidence which was available at the time of the First Hearing.

Therefore it is my finding that *res judicata* applies in this case and I am unable to hear the Tenant's Application which I now dismiss without leave to re-apply.

### Conclusion

The Tenant's Application cannot be heard because the principle of *res judicata* applies in this case. As a result, I dismiss the Tenants' Application without leave to re-apply.

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: March 04, 2015

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Residential Tenancy Branch

