



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* ("the *Act*") for compensation for loss under the *Act*, regulation or tenancy agreement and to recover the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he sent a copy of his dispute resolution hearing package to the landlord by registered mail on or about August 30, 2014. He testified that it was a long time ago and he could not confirm the exact date. The landlord confirmed receipt of this package. Based on the evidence provided, I find the landlord duly served with the tenant's dispute resolution hearing package.

Preliminary Matter: Prior Application

This tenancy ended in 2013. On October 4, 2013 and November 20, 2013, Residential Tenancy dispute resolution hearings were held with respect to the tenant's application for emergency repairs and a monetary order against the landlord. The tenant withdrew his application for repairs as he had vacated the rental unit. On November 20, 2013, the original arbitrator issued a decision on the tenant's application for a monetary order. The original arbitrator indicated that the tenant had sought and was granted an adjournment to submit further evidence. The original arbitrator indicated that, at the second hearing, no further evidence had been submitted by the tenant. The tenant's application was ultimately dismissed without leave to re-apply.

The tenant's most recent application sought a monetary Order of \$5000.00. The tenant testified that this application is with respect to a large pest problem within the residence. He seeks compensation for having to live in the conditions for 5 months while the landlords did not act to resolve the problem. His application seeks \$2312.50 for those

five months. This was the amount sought in his previous application. For this dispute resolution hearing, he increased the amount sought by including moving costs and the first month's rent at his new place. In his current application for dispute resolution, the tenant wrote:

Please reinstate the following Claim due new evidence [refers to previous application number]

Analysis: Jurisdiction to hear matter

The dispute resolution hearing as scheduled is the tenant's opportunity to present any and all evidence that he can to support his application. In the first hearing of this matter, the tenant sought an adjournment to provide further evidence. At the commencement of the continuation of the hearing of his 2013 application, the tenant provided no further evidence. At the current hearing, he testified that he now has evidence to support and bolster his claim.

The doctrine of *res judicata* prevents the retrying of a matter. An applicant is entitled to have full opportunity to present their evidence at hearing. The applicant in this case had that opportunity. The respondent attended and responded at the original hearing of this matter. The applicant and respondent are the same parties that were present in this original hearing. An arbitrator made a decision based on the best evidence that the tenant provided at that time.

I find this application seeking a monetary order from the tenant addresses the same tenancy and the same issue that was before the original arbitrator. It is the same question raised in this application that was addressed in the earlier decision. I therefore find that this current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again.

I find that the tenant's bolstering of his application to seek a larger monetary award does not change the nature of his claim nor the fact that this matter has been previously heard. The tenant's original application related directly to the pest problem within the residence and his damage or loss in relation to that problem. His current application is with respect to the same problem, claiming the same loss and further seeking a larger amount of compensation based on further claimed losses, which could have been included in his original application as those costs were known to him in advance of the adjourned hearing of November 20, 2013.

An applicant bringing a claim in court or to dispute resolution bears a certain onus to present their best evidence at the time. The hearing process and the principle of *res*

judicata are based on the presupposition that a claimant or applicant has a responsibility to take all steps to ensure they are able to present their best case. The adjournment process, available in all types of proceedings, allows a claimant or applicant to provide reasons why they require more time to make their application.

In the case of the original dispute resolution hearing for this applicant, he was granted an adjournment and an opportunity to present all his best evidence. The earlier decision was final in dismissing that application without leave to reapply. The fact that he failed to do so or that he failed to anticipate further costs does not create an opportunity for the tenant in this matter to revisit an issue already decided. The Rules of Procedure for the Residential Tenancy Branch do not allow the division of claims for the very reason that the fairness of the process is impacted by allowing a party to parcel or divide and retry their claims.

For these reasons, I decline jurisdiction to hear this matter.

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 27, 2015

Residential Tenancy Branch

