Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COREMARC PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Manufactured Home Park Tenancy Act (the "*Act*") for an Order that:

> *"the tenant provide the landlord with proof that the leak of oil from the tank on the site is not substantial enough to have caused environmental damages and that the tenant will be leaving the site with only reasonable wear and tear."*

Two agents appeared for the tenant (collectively the "tenant") at the teleconference hearing. The landlord's agent (the "landlord") also appeared at the teleconference hearing.

At the start of the hearing, I recognized that the issues raised by the landlord in their application were substantially the same issues that I had determined at a previous hearing with the same parties. The file number for the previous hearing is indicated on the cover page for ease of reference. The previous hearing was heard on January 4, 2017 and the decision was rendered on January 26, 2017.

After hearing submissions from the landlord and tenant, it became apparent that it was not necessary to hear further testimony and evidence regarding the landlord's application for the reasons stated below.

Preliminary and Procedural Matters

At the start of the hearing, the landlord requested an adjournment of approximately one month citing the need to gather further evidence as a result of the landlord's decision to conduct its own soil testing instead of seeking an order requiring the tenant to do the testing. The landlord indicated that their desire is to have the hearing after the soil testing is complete at which time the landlord would seek a monetary order against the tenant for the cost of same.

The tenant opposed the adjournment request. The tenant's position is that the issue raised in the landlord's application has already been decided in a previous hearing.

Residential Tenancy Branch, Rules of Procedure, Rule 6.4 sets out the criteria for granting an adjournment:

> Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:
>
> (a) the oral or written submissions of the parties;
>
> (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
>
> (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
>
> (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
>
> (e) the possible prejudice to each party.

I informed the landlord at the hearing that I would not grant the adjournment request. Although I considered all the criteria in Rule 6.4, I declined to adjourn the hearing as the adjournment would unfairly prejudice the tenant in light of the landlord's reason for the adjournment. The landlord's purpose for the adjournment is to gather evidence in support of relief which the landlord has not included as part of their application. As a result, the adjournment would not aid in the determination of the issues that are before me.

Issue to be Decided

- Is the landlord entitled to an order that the tenant provide the landlord with proof that the leak of oil from the tank on the site is not substantial enough to have caused environmental damages and that the tenant will be leaving the site with only reasonable wear and tear?

Background and Analysis

Res judicata is a rule in law that a final decision has been made and cannot be heard again. There are three preconditions that must be met before the principle of *res judicata* can operate:

1) The same question has been decided in an earlier proceeding;
2) The earlier decision was final; and
3) The parties to the earlier decision are the same in both the proceedings.

The landlord is seeking an order that the tenant provide the landlord with proof from an accredited firm based upon an allegation that there is a potentially leaky oil tank on the tenant's site.

I have considered the landlord's request in relation to the previous decision issued on January 26, 2017.

The previous hearing dealt with the tenant's application under the *Manufactured Home Park Tenancy Act* for an order to allow the tenant to assign the pad tenancy agreement to a bone fide purchaser. The tenant argued that the landlord's consent was being unreasonably withheld.

The landlord claimed that the tenant's oil tank had a leak that may have contaminated the soil. The landlord took the position that the landlord required proof from the tenant first that there is no problem with contamination by having the soil tested before consenting to the assignment. Without proof to the contrary, the landlord maintained that the manufactured home did not comply with housing, health and safety standards required by law.

A final order was made granting the assignment after a finding that the landlord's consent was unreasonably withheld. In reaching a decision, several findings were made including the following:

- there was insufficient evidence that there is a leak in the tank that has led to soil contamination sufficient to support a finding that the manufactured home does not comply with health and safety standards required by law; and
- the *Act* does not entitle the landlord to require the tenant to do soil testing.

I find that there is an overlap between the tenant's previous application and the landlord's present application such that the earlier issue appears to be at issue again in the present proceeding.

I have considered the three preconditions that must be met which may preclude a rehearing. I find that the decision rendered on January 26, 2017 was a final and binding decision. I find that the parties involved in the present hearing are exactly the same as in the previous hearing. I also find that the issues that the landlord has raised in this present application are sufficiently similar to those issues that were considered and determined in the previous decision.

Based upon the foregoing, I find that the principal of *res judicata* should be applied as there would be a potential injustice that could result if the same issues were re-litigated.

I therefore dismiss the landlord's application as I find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

Conclusion

I am unable to consider the landlord`s application as this matter has already been subject to a final and binding decision by an Arbitrator appointed under the *Act* on January 26, 2017.

The landlord's application is dismissed without leave to re-apply.

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 *Manufactured Home Park Tenancy Act*.

Dated: February 16, 2017

Residential Tenancy Branch