



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD, IMH 350 & 360 DOUGLAS LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, OLC, PSF, RP, RR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for compensation for loss or money owed; to have the landlord make emergency repairs for health and safety reasons; for an order for the landlord to comply with the Act; an order for the landlord to provide services or facilities required by the Act; to allow a tenant to reduce rent for repairs, service or facilities and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary and procedural matters

Counsel submits the tenants are attempting to reargue the same issues that were previously heard on March 13, 2017 and a final decision made on March 24, 2017.

Counsel for the landlord submits that the tenants' application is barred from being heard due to the principles of Res Judicata.

Counsel submits that this is the same cause of action because it is the same repair project that was known to be continuing at the last hearing, and is the same issues, such a noise.

Counsel submits the tenants' application was dismissed; this included the tenants request for a rent reduction for ongoing repairs.

The tenants submit this is not the same cause of action as it relates to different issues and a different time.

Analysis

I have reviewed the tenants' previous application that was filed on February 2, 2017. The application summary is as follows:

- For compensation money owed or loss;
- To have the landlord comply with the Act;
- To have the landlord provided services or facilities required by the Act; and
- To reduce rent for repairs.

The detail of dispute refer to issues of repairs, the loss of a swimming pool on the premises, the compressor station located underneath their rental unit, noise, and 6 months of repairs have been impacted by asbestos.

In the tenants' new application filed on August 10, 2017, which is before me, the details of dispute refer to, the ongoing extensive renovation, the loss of the swimming pool, dust, noise and asbestos issues and disruption for the mail delivery in February 2017.

The tenants are seeking compensation in the form of rent reduction that occurred between February 2017 and August 2017. However, this is the same cause of action as the repairs on this building were ongoing. The Arbitrator at the hearing on March 13, 2017, made a final decision on March 24, 2017, that dismissed the tenants' application for future rent reduction for ongoing repairs.

In the case before me, the tenants seek compensation for no swimming pool, dust, noise, entrance blockage, asbestos and no mail delivery; however, these issues were known to the tenants at the time their original application was heard on March 13, 2017, as they were in their details of dispute. Whether the tenants present evidence on these issues at the original hearing is not necessary for me to consider, as a tenants has a duty to bring forward their whole case.

While I accept the tenants' claim is for a different period, I find that it is the same parties, the same action of cause that was known at the time of the last hearing to be continuing until the project ended. The Arbitrator made a final decision to dismissed the tenants' application, which included any future rent reduction for ongoing repairs that were related to this project.

Therefore, I decline to hear the tenants' application due to the principals of Re Judicata. The tenants' application is dismissed without leave to reapply.

Conclusion

The tenants' 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: November 24, 2017

Residential Tenancy Branch