



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. At the beginning of the hearing, the landlord said this matter was already heard on June 4, 2018 and decided in his favour. The tenant had not attended that hearing.

The tenant said he was advised by the Residential Tenancy Branch to file this Application and thought both files would be heard at the same time. He requested to proceed with the hearing. The tenant requests the return of his security and pet damage deposits pursuant to section 38 of the *Residential Tenancy Act*.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

A Decision was rendered on June 4, 2018 by another arbitrator in favour of the landlord retaining the security deposit. On reading the Decision, I find the landlord provided evidence of service by registered mail and the arbitrator found the tenant was deemed to be served. I advised that the matter was *res judicata* (heard and decided) so I had no jurisdiction (authority to hear it again). I advised the tenant that he had the option to have the Decision reviewed and/or to appeal it to the court but not to have it heard today.

He said he never received a copy of the Decision dated June 4, 2018. The landlord said he forwarded the copy he had received by email to the tenant and in it were instructions on how to have it reviewed.

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Analysis:

The issue of res judicata was thoroughly canvassed by Madam Justice Ballance in *Tylon Steepe Homes Ltd. v. Pont*, 2011 BCSC 385 at paras. 52 to 56:

[52] The doctrine of res judicata is a time-honoured cornerstone of Canadian justice. Where a cause or a fundamental issue has been decided, it is said to be res judicata and, absent special circumstances, is precluded from being adjudged a second time. When res judicata applies, a litigant is stopped by the prior suit, from proceeding in the subsequent action. The maxim has been traditionally regarded as an exclusionary rule of evidence. The paramount policy considerations include the avoidance of duplicative litigation, potential inconsistent results and inconclusive proceedings. Finality to litigation is the prime objective. (See generally: Angle v. Minister of National Revenue, [1975] 2 S.C.R. 248 [Angle]; Grdic v. The Queen, [1985] 1 S.C.R. 810 [Grdic]; Danyluk v. Ainsworth Technologies Inc., 2001 SCC 44, [2001] 1 S.C.R. 460 [Danyluk]).

I find the issue of the return of the tenant/applicant's security deposit was already decided in a Decision rendered June 4, 2018. I dismiss this application.

Conclusion:

I dismiss this application as the issue is res judicata. I find the tenant not entitled to recover the filing fee due to lack of success.

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: July 25, 2018

Residential Tenancy Branch