



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for rent and/or utilities pursuant to section 67.

Both the landlord and the tenant attended the hearing. The landlord was assisted by his agent, AC ("landlord") and the tenant was assisted by her agent, MB ("tenant"). As both parties were in attendance, service of documents was confirmed. As the tenant confirmed receipt of the Landlord's Application for Dispute Resolution package by mail, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue

The tenant testified that there was a previous arbitration that took place regarding this tenancy. The case number for the previous arbitration is provided on the cover page of this decision. With the consent of the landlord and the tenant, I reviewed the outcome of the previous arbitration and made the following findings.

- On January 9, 2019 an arbitrator ruled the landlord was entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*.
- On February 1, 2019, the tenant succeeded in an application for review of the January 9, 2019 hearing. The matter was set for a new hearing on March 7, 2019.
- The landlord did not attend the March 7, 2019 hearing. The arbitrator set aside the January 9, 2019 order and dismissed the landlord's claim for a monetary order for unpaid rent without leave to reapply.

Analysis

Res judicata prevents a plaintiff 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 re-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. Former adjudication is analogous to the criminal law concept of double jeopardy.

The landlord's claim for three months of unpaid rent is the same issue pursued in the previous arbitration. It was decided by the previous arbitrator that this claim be dismissed without leave to reapply. As this decision has already been made, *Res Judicata* prevents me from re-hearing the case. I am required to dismiss the landlord's claim without leave to reapply.

As the landlord was not successful in his application, the landlord is not entitled to recover the filing fee.

Conclusion

The landlord's claim is dismissed without leave to reapply.

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: June 28, 2019

Residential Tenancy Branch