



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OTBEC Property Management
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, MNRL-S, MNDCL-S, FFL**

Introduction

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

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing and the landlord was represented at the hearing by property manager, SD ("landlord"). As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Application for Dispute Resolution and the landlord acknowledged service of the tenant's evidence. Neither party raised any concerns with timely service of documents.

Preliminary Issue

At the commencement of the hearing, the landlord acknowledged she was provided with a copy of an arbitrator's decision dated October 8, 2020 from the tenant. The landlord testified that she believes the comptroller of her company also received a copy of the decision some time ago, though the landlord hadn't thoroughly read the decision prior to the hearing. The landlord acknowledged that on October 8, 2020, the landlord did not attend the hearing before the arbitrator on their application regarding the same issues as the one before me. The landlord testified they already knew they weren't successful in the previous hearing because they didn't attend the hearing.

A copy of the previous arbitrator's decision was provided as evidence by the tenant. In that decision dated October 8, 2020, the arbitrator notes the landlord failed to attend the hearing and in the absence of any submissions from the applicant, the arbitrator ordered the application before her be dismissed without leave to reapply. The file number for the previous decision is recorded on the cover page of this decision.

The doctrine of *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.

I find the cause of action in the landlord's first application is the same as the cause of action before me. The previous arbitrator specifically denied the landlord leave to reapply for the relief sought. As such, the doctrine of *res judicata* bars the landlord from re-litigating this claim and I must dismiss it in its entirety.

Conclusion

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

This decision is final and binding and 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 12, 2021

Residential Tenancy Branch