



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT MNSD

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary claim of \$35,000.00 for the return of their security deposit and issues related to mould including lung damage and allergies. The filing fee was waived for this application.

The tenant and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Both parties were provided the opportunity to ask questions during the hearing.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

As the tenant made an error with the address of the rental unit, I have corrected the rental unit address to match the tenancy agreement submitted in evidence, pursuant to section 64(3)(c) of the Act.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Shortly after the start of the hearing, the landlord's issue raised in their evidence was that these matters have already been heard at a previous hearing on March 9, 2020 and dismissed without leave to reapply in the previous decision dated April 8, 2020 (Previous Decision). The Previous Decision contained two files numbers, one for the landlord's application and one for the tenant's application. The files numbers for the Previous Decision have been included on the style of cause for ease of reference.

The Previous Decision should be read in conjunction with this decision. As the tenant has already applied for the return of their security deposit and for compensation due to lung damage, both of which were dismissed without leave to reapply, I explained to the parties, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In addition, Rule 2.9 of the RTA Rules states that a party may not divide a claim. In light of the above, I have not re-heard the matters already dealt with under the previous application.

Based on the above, I am barred at law from rehearing this matter due to *res judicata*.

The landlord has a monetary order from the Previous Decision that they may enforce.

### Conclusion

This matter cannot be re-heard due to the legal principle of *res judicata*. The landlord may enforce their monetary order from the Previous Decision in the Provincial Court, Small Claims Division.

Should the tenant apply for the same remedy again in the future regarding this tenancy, the tenant is cautioned that they could be recommended for an investigation by the RTB Compliance and Enforcement Unit.

This decision will be emailed to both parties.

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 *Residential Tenancy Act*.

Dated: July 5, 2021

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Residential Tenancy Branch