



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order for a rent reduction and failure to comply with health and safety laws, pursuant to the *Residential Tenancy Act (Act)*.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

At the outset of the hearing, I attempted to clarify with the tenant how this claim was different than her claim that resulted in a decision dated September 26, 2019 (file number provided on the coversheet of this decision), in which she was awarded \$2,625.00 for, as the Arbitrator wrote:

"Based on the evidence before me overall, I find some merit to the Tenant's complaints about the Landlords not maintaining the residential property in keeping with section 32 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common

areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

One of the things the Landlord said was that the Tenant's: "...drain for her washer/dryer was working until two years ago." That implies that it was not working for the last two years. The Landlords agreed that one of the exit doors was not functional, could not be locked, that the outside stairs to this door had been removed, that the Tenant had to place furniture in front of it to avoid an accident, and that she could not get appropriate insurance for the rental unit, because of this.

I find that the Tenant has not provided sufficient evidence to be successful in her claim for recovery of \$35,000.00; however, in this set of circumstances, I find that it is more likely than not that the Landlords did not attend to the repairs of the property in a timely manner of their own accord, which resulted in a series of dispute resolution hearings and Orders. Accordingly, I award the Tenant a nominal amount of **\$2,625.00 or 7.5%** of her claim for a breach of quiet enjoyment of the premises, pursuant to Policy Guideline #16."

As the tenant's Application for this hearing included the same claims that the landlord had failed to make repairs for the duration of the tenancy, the tenant explained that she had been told by Residential Tenancy Branch staff that she had applied for the wrong type of compensation that resulted in the September 26, 2019 decision.

She stated that the September 2019 decision was made against the landlord for the loss of quiet enjoyment, but she should have requested compensation in the form of a "rent reduction and failure of the landlords to comply with health and safety laws."

I tried to explain to the tenant that the matter had already been adjudicated and that it made no difference what the claim was called, (ie. For loss of quiet enjoyment or a rent reduction) it amounted to the same circumstances and claim and was therefore considered *res judicata* and it could not be heard again.

The tenant became upset and continually asserted that it wasn't fair that the landlords "could get away with" not providing her with what she should have been entitled to as a result of her tenancy agreement and the paying of rent. I tried to explain that she had been granted an award for this very thing from the decision of September 2019.

Despite my multiple attempts, the tenant continually tried to argue that it was not the same issue because she was seeking a rent reduction instead of compensation for loss

of quiet enjoyment. I found the tenant's behaviour was aggressive and unyielding. Eventually, the tenant left the hearing. Below, I explain the rationale for finding the matter *res judicata*.

The following passages from the text: *Res Judicata*, Spencer-Bower and Turner, 2nd ed. (London: Butterworths, 1969) were expressly adopted and applied to circumstances analogous to those before me on this Application in the decision of the Supreme Court of British Columbia in *London Life Insurance Company v. Zavitz et al*, [1990] S.C.B.C., Vancouver Registry No. C881705:

At page 359 of *Res Judicata* the required elements to support a plea of "former recovery" are set out as follows:

1. That the former recovery relied upon was obtained by such a judgment as in law can be the subject of the plea;
2. That the former judgment was in fact pronounced in the terms alleged;
3. That the tribunal pronouncing the former judgment had competent jurisdiction in that behalf;
4. That the former judgment was final;
5. That the Plaintiff, or prosecutor, is proceeding on the very same cause of action, or for the same offence, as was adjudicated upon by the former judgment;
6. That the parties to the proceedings, or their privies, are the same as the parties to the former judgment, or their privies.

The learned author commented further at p. 380:

... where there is substantially only one cause of action, and it is a case, not of "splitting separable demands", but of splitting one demand into two quantitative parts, the plea [of *res judicata*] is sustained. In homely phrase, a party is entitled to swallow two separate cherries in successive gulps, but not to take two bites at the same cherry. He cannot limit his claim to a part of one homogeneous whole, and treat the inseparable residue as available for future use, like the good spots in the curate's egg.

... Thus, where the omitted matter is a portion of the entire sum, or an item or parcel of the entire property, recoverable on a single cause of action, the judgment is a bar to any subsequent action in respect of such omitted matter.

In the Application before me I find the parties are identical to the parties in the former proceeding resulting in the decision of September 26, 2019. I also find that the decision and order were rendered, at least in part, with respect to the applicant's assertions that the landlords failed to provide her rental unit in a manner that complies with the *Act*. I find that the former judgment was final.

The claim before me, as was the prior claim, is one requesting compensation for the tenant's assertions that the landlords failed to provide her rental unit in a manner that complies with the *Act*. While the tenant seeks the same compensation under different sections of the *Act*, I find the underlying claim is based on the same issues and circumstances raised in the decision of September 26, 2019

I find that the tenant, by bringing this second application is splitting one homogenous claim for compensation into two parts when the amount was recoverable on the original cause of action.

I find that the September 26, 2019 decision that granted the tenant a monetary award in the amount of \$2,625.00 and the order that set the tenant's award off against the landlords' award of \$7,710.00, does constitute a bar to a subsequent claim for the same issues that were included in the tenant's original claim and considered for that decision.

Conclusion

Based on the above, I order the tenant's Application for Dispute Resolution is dismissed, in its entirety, 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: January 28, 2022

Residential Tenancy Branch